BEFORE THE
SUPREME COURT OF THE STATE OF WASHINGTON

In re **FREDRIC SANAI** **Lawyer (WSBA No. 32347)**	Bar No. 32347 Supreme Ct. Case No. 200,560-8 ✓ **RESPONDENT FREDRIC SANAI'S BRIEF IN CONCERNING ORDER TO SHOW CAUSE**

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

I. INTRODUCTION.

Respondent Fredric Sanai hereby submits his brief to show cause why he should not be suspended from practice of law.

II. SUMMARY OF ARGUMENT.

Respondent Fredric Sanai is a lawyer qualified in Oregon and Washington State. He is employed by Yamhill County (Oregon) as an attorney. He became a Washington State attorney for the purposes of defending his mother Viveca and challenging a long-accepted practice in Washington State, prevalent in the state courts and in federal courts staffed by former Washington State judges, where employees or contractors of private litigants are appointed as judicial referees, special masters, receivers etc. in litigation involving the employer. Specifically, in his parents' divorce case, his father's long-time accountant was appointed Special Master to distribute the marital assets. The accountant then proceeded to cheat the wife (Fredric's mother) out of tens of thousands of dollars, reducing her to poverty after being a loyal wife and mother of 41 years.

Respondent contended, and continues to contend, that the practice of employing a litigation party's employee as a Special Master (or other judicial officer) is judicial corruption by proxy; a private litigant is allowed to have a person on his payroll serve as a special purpose judicial official in litigation, thereby receiving unfairly favorable treatment.

To date no court has been able to refute this argument or defend this practice. Instead, the relevant courts to which the argument has been addressed, including this Court, have chosen to punish every person who raises the argument.

Because Respondent does not now represent anyone in Washington State, has not done so for years, and has no intention of representing anyone else, nothing will be accomplished by his suspension other than punishing him for raising valid due process arguments before courts which cannot refute them, but nonetheless have a vested interest in maintaining the status quo.

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In addition to the fact that interim suspension will not accomplish any valid public purpose, there are additional reasons that interim suspension is inappropriate. The first is: during the Bar proceedings Respondent was denied the attorney of his choice, and then when a life-threatening medical emergency precluded his participation in the hearing, the hearing officer chose to proceed without Respondent, denying his due process right to having a meaningful opportunity to be heard. Respondent was denied the ability to mount any defense, and was tried *in absentia*. As a result, both the factual and legal conclusions reached by the Hearings Officer are flawed and riddled with serious errors (*e.g.* the Hearings Officer found that Respondent had been previously disciplined by the Oregon State Bar, which is false. The Respondent has never been disciplined by the Oregon State Bar).

The second grounds is that two federal appeals before the Ninth Circuit Court of Appeals are pending which, if successful, will result in the vacation of all of the federal court rulings and most of the state court rulings which were grounds for the imposition of discipline. Given the ongoing appeals, there will be no or little basis for imposing discipline if Respondent's situation in federal court is vindicated.

III. RESPONDENT'S CURRENT PARTICIPATION IN WASHINGTON STATE COURT SYSTEM.

It is undisputed that Respondent is not representing anyone other than himself in Washington State courts at this time, and has stated that he will not do so for the foreseeable future. Accordingly, imposing an interim suspension on Respondent accomplishes nothing but professional injury. No articulable public policy is in reality served by imposing an interim suspension of an attorney who could not participate in the hearing for health reasons, was deprived of counsel of his choice, and denied any meaningful discovery.

Moreover, as discussed below, Respondent has both strong arguments as to why the Board's actions were a violation of fundamental due process, and that ongoing legal proceedings may well alter the outcome of the litigation from which these proceedings arose.

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IV. REFUSAL TO RESCHEDULE HEARING.

The conduct of the hearing was a violation of Respondent's due process rights, as he was unable to attend or participate due to a health emergency.

Due to the onset of severe headaches, fainting, and irregular heartbeat, Respondent obtained an emergency appointment with his physician. Discovering that Respondent had life threatening elevation in his blood pressure due to a pre-existing cardiovascular condition, Respondent's physician barred him from participating in any stressful trials or other legal proceedings. Exh. 30, 32 F. Sanai Decl. ¶28. Respondent immediately informed the hearing officer and disciplinary counsel of his incapacity the week before the scheduled hearing, took a week off work on medical leave, and canceled all of his trial appearances for the subsequent weeks in accordance with his physician's instructions. F. Sanai Decl. ¶28. The Hearing Officer chose to proceed with the *hearing in absentia,* notwithstanding the overwhelming and unrefuted evidence of Respondent's illness. The result is that Respondent was deprived of any fair opportunity to defend himself in the disciplinary proceedings.

V. Violation of Due Process and Discovery Rights in Pre-Hearing Proceedings.

A. Overview.

Beginning in 2006, the national press began examinations of judicial misconduct and corruption in several jurisdictions. The *New York Times* ran a series concerning its limited jurisdiction municipal courts documenting a general pattern of extraordinary corruption and misconduct. *See* Exhs. 1, 2. It also ran a series on the effects of campaign contributions on judicial decision-making, using Ohio's Supreme Court as a test case. Exh. 10. On the West Coast, the *Los Angeles Times* documented the Ninth Circuit's mishandling of the Manuel Real disciplinary case, which resulted in a Congressional hearing and direct criticism from the Breyer Committee report released last year. The *Los Angeles Times* also issued a three-part series on the

Fredric Sanai
660 2nd Street No. 7
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Fax: (503) 434-7553

rampant culture of judicial corruption in the Nevada state and federal benches. Exh. 3, 4. In particular, the article focused on Nevada state and federal judges who regularly adjudicated cases where the lawyers or parties involved had a direct or indirect financial relationship with the judge, as well as spotlighting federal district Judge Mahan, who regularly appointed his business partner and political supporter as a special purpose judicial officer in cases without disclosure or consent of the parties. Exh. 4.

The practices highlighted in the *Los Angeles Times* article on Nevada's jurists are not unique to that state; they are precisely the same practices that Respondent challenged in Washington State. That these practices continued for so long in Nevada is not because they go unchallenged; as set forth in the article concerning Nevada's United States District Judge Mahan, the appointment of his business partner as a special purpose judicial officer was directly attacked by the parties, to no avail.

B. The Underlying Lawsuits and the Disciplinary Proceedings.

The core of these proceedings is Respondent's efforts to judicially challenge the corrupt practices of the Washington state judiciary. The practices which Respondent attacked are the appointment of special purpose judicial officers who are either employees or servants of a litigant, or business partners of a judge.

The circumstances arose from a divorce. After many years of abuse from her husband Sassan Sanai ("Sassan"), and in fear of her life, Viveca Sanai ("Viveca") fled her family home in November of 2000. A protection order was issued removing Sassan from the house and restoring Viveca to the house. F. Sanai Decl. ¶2.

Divorce proceedings ensued. Sassan dismissed his first lawyers and hired a local pro-tem judge, William Sullivan ("Sullivan").[1] F. Sanai Decl. ¶3. Respondent submitted some

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[1] Under Washington State law, an attorney can be appointed as a pro-tem judge of a tribunal that the attorney regularly appears before. *See, e.g.* WSBA Informal Advisory Opinion 1790 (1997).

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Fax: (503) 434-7553

declarations on factual matters in the proceedings, but otherwise was not involved in the litigation. F. Sanai Decl. ¶6. Respondent was never identified as a witness at the divorce trial by either side, nor was he called to testify. *Id.* After the trial was completed, Sullivan convinced the judge who conducted the trial, Snohomish County Superior Court Judge Joseph Thibodeau, to appoint Sassan's accountant, a witness in the case, as a referee who now controls all of Viveca's finances. F. Sanai Decl. ¶4. The trial court issued a final decree incorporating Maxeiner's appointment on April 12, 2002. Exh. 11. Both Sassan and Viveca appealed the decree. F. Sanai Decl. ¶5.

At this time Repondent became Viveca's appellate counsel and co-counsel at the trial level. The reason Repondent was hired was because the trial attorney would not agree to challenge Maxeiner's appointment on appeal, due to his belief that the Washington state courts would not consider any kind of due process argument concerning the appointment of Maxeiner. It subsequently became obvious that that Washington judicial officials regularly rule in cases in which they have accepted money from one of the litigants or the litigants' attorneys through a variety of means. *See* fn 3, *supra.*

Though such conduct has been condemned by the American Bar Association's model rules of judicial conduct, the Washington State Supreme Court rejected that position. WSBA Formal Advisory Opinion 160 (1975). Similarly, an attorney can be the partner of another attorney who is a judge or other judicial official, and still deal with matters before that judicial official. *See* WSBA Informal Advisory Opinion 936 (1985). The Washington State Supreme Court also permits lawyers to simultaneously lead election campaigns for a judge and contribute money to them while appearing before the judge. WSBA Informal Advisory Opinion 1161 (1985); WSBA Informal Advisory Opinion 1694 (1997). There has been one case where a judge chose to simultaneously act as the defendant's appointed criminal defense counsel; the judge received a short suspension and public reprimand, which was viewed by the dissent as largely retaliation for the judge's issuance of press releases concerning the four year investigation. *In re Disciplinary Proceeding Against Michels,* 150 Wn.2d 159, 178 (2003)(Sanders, J., dissenting). In the civil context, a part time or pro tempore judge may simultaneously represent a litigant in court and adjudicate a different case involving the same litigant. Washington's ethical rules do not bar a judge from appointing a litigant or a litigant's servant as a judicial officer in a proceeding involving that litigant; while the statutory rules forbid this, the statutes are ignored by the Washington State appellate courts.

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Sassan filed a motion to disqualify Respondent as Viveca's counsel. The grounds were, *inter alia*, that Respondent had filed declarations in the dissolution action, making him a witness, and that Respondent had a conflict of interest because he was suing Sassan. Because many of the same grounds asserted by Sassan for disqualification of Respondent truly applied to William Sullivan, a motion to disqualify him was filed as well in the dissolution action and other actions involving the wiretapping claims. F. Sanai Decl. ¶7.

On September 27, 2002, Judge Joseph Thibodeau disqualified Respondent from acting as Viveca's counsel with the rationale that Respondent was "actually bringing more heat to this case than anything else. He's a party suing the very individual he's now attempting to be a representative against. That seems to be a conflict on its face." Exh. 13, 14. Judge Thibodeau denied the motion to disqualify Sassan's lawyer William Sullivan. *Id.*

On October 23, 2002, Viveca filed a notice of appeal of the order disqualifying Respondent. Viveca also challenged certain of these orders by motion. F. Sanai Decl. ¶8. On November 4, 2002, Commissioner Craighead of the Washington State Court of Appeals ruled that though the parties believed that the WA.R.APP.P. 17 motion procedure was the appropriate procedure for the Court of Appeals to review the challenged post-judgment procedural orders, the relevant orders of the trial court had to be addressed by discretionary review or appeal; she did not say which was appropriate. Exh. 15. Commissioner Craighead also ruled that "The third order [challenged] disqualifies Respondent Sanai from representing Appellant in the trial court." *Id.* Accordingly, Respondent continued to represent Viveca in the Court of Appeals and Supreme Court levels, but not at the trial court level.

Plaintiff on behalf of Viveca complied with Commissioner Craighead's November 4, 2002 order by filing WA R.APP.P. 6.2(b) motions for the Washington State Court of Appeals to determine whether the relevant orders were appealable or reviewable by discretionary review only, and if the latter, to request the Court to grant discretionary review. On March 11, 2003, the Washington State Court of Appeals dismissed all of Viveca's post-judgment appeals, including

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660 2nd Street No. 7
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the appeals of the order disqualifying Respondent, on the grounds that none of the orders appealed were appealable. F. Sanai Decl. ¶9; Exh. 16.

Respondent on behalf of Viveca filed a Motion for Discretionary Review of the Washington State Court of Appeals' March 11, 2003 order with the Washington State Supreme Court. Rather than ruling on them, the Commissioner of the Washington State Supreme Court *sua sponte* requested three pages of briefing on the question of whether Respondent was disqualified from acting at this level. Exh. 17. Briefing was submitted, and the Commissioner issued a ruling on June 10, 2003, disqualifying Respondent from acting for Viveca at all. A motion for modification, filed by Viveca *pro se* without Respondent's assistance, was denied without comment, and Viveca and Respondent were sanctioned $1,000, without notice or an opportunity to be heard. F. Sanai Decl. ¶10; Exh. 18. The Washington State Supreme Court also instructed the Washington State Bar Association to initiate the disciplinary proceedings at issue here. F. Sanai Decl. ¶10.

Viveca proceeded on the appeal *pro se,* with assistance from counsel outside of Washington. Her opening brief contended that:

> The second fundamental error was in appointing Sassan's accountant Philip Maxeiner as a "Special Master", but then imbuing him with the power and authority of a receiver when Maxeiner does not and cannot meet the mandatory qualifications of a receiver under RCW 7.60.
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> ....
>
> Second, Maxeiner is an "interested party" within the meaning of RCW 7.60.020. This provision provides that "no party or attorney or other person interested in an action shall be appointed receiver therein." The reference to "attorney or other person interested in an action" dictates that no representative or advisor to a party may be appointed receiver. The reason for this is obvious. The receiver owes a duty to the court and all parties--it is completely inconsistent with principles of wise judicial administration to entrust the assets at the center of a conflict to a person who is not neutral. Indeed, the Washington Supreme Court disbarred a lawyer who engineered the appointment of a receiver he secretly controlled in order to fraudulently place a corporation he owned into receivership as a defense against an employee lawsuit. *In re* Little, 40 Wn.2d 421 (1952).

Exh. 19.

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
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Fax: (503) 434-7553

In an opinion written by Justice Baker, the Court of Appeals agreed with Viveca that Maxeiner was not a special master, but then appointed him as a **judicial referee**. Exh. 20. The author of the opinion, William Baker was (before his appointment to the Washington State Court of Appeals) a name partner in the small Everett, Washington law firm of Anderson Hunter (then called Anderson, Hunter, Dewall, Baker & Collins). *See e.g. Himango v. Prime Time*, 37 Wn. App. 259, 680 P.2d 432 (1984) (Justice Baker listed as counsel); *Odegaard v. Everett School Dist.*, 55 Wn. App. 685, 780 P.2d 260 (1989) (Justice Baker still listed as name partner).Sassan was a client of Anderson Hunter for many years, including the period in which Justice Baker was one of its name partners. One of Justice Baker's former partners, Virginia Antipolo-Utt, handled the ERISA accounts that were one of the primary assets in the marriage dissolution case since 1988, and was a witness in the divorce proceeding. F. Sanai Decl. ¶22. Viveca discovered this information after the opinion was issued. She filed a motion for rehearing, arguing as follows:

> Maxeiner could not act as a referee, as he is not neutral, was a witness at trial, and is not an attorney. His appointment as referee was a violation of statute and my constitutional rights of due process, and thus illegal and void. Moreover, Maxeiner's status as a putative referee makes manifest that certain other of this Court's holdings in the opinion were erroneous.

Exh. 21.

Viveca also requested that the opinion be vacated and Baker recuse himself. The Court of Appeals denied the motion without reasoning. Exh. 22.

Viveca filed petition for review with the Washington State Supreme Court, again without any assistance or participation by Respondent. Her petition presented, *inter alia,* the following question to the Washington State Supreme Court:

> Is it a violation of RCW 4.48.040, the jurisdiction of the Washington State Courts and a party's due process rights to appoint the opposing party's accountant who appeared as a witness at trial as a referee in the post-trial proceedings, including allowing the referee to file federal tax returns on behalf of the party?
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> ...
>
> The Court of Appeal agreed with Viveca that Maxeiner was not a special master, but rather surprisingly ruled he was a referee, given that Maxeiner did not meet the requirements for taking this judicial office under RCW 4.48.040. Maxeiner is not a "duly admitted and practicing attorney." RCW 4.48.040(3). He is an accountant, as noted in

Fredric Sanai
660 2nd Street No. 7
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Fax: (503) 434-7553

> the opinion. Maxeiner is not competent to act as a juror between the parties, as he is Sassan's accountant and was a witness at the dissolution trial, where he acknowledged that he answered only to Sassan. [11/14/2001 RP 267:7-23.] RCW 4.48.040(2). Maxeiner's appointment was thus a violation of statute, the appearance of fairness doctrine, and Viveca's due process rights.

Exh. 23.

In the opposition to the petition, respondent Sassan did not contest that the appointment of Maxeiner was a violation of Viveca's due process rights. Viveca wrote in her reply:

> Even if Respondent and the Court of Appeals were correct, and there are absolutely no statutory standards whatsoever governing whom a judge can appoint as a referee to dispose of over a million dollars of property, the appointment of Maxeiner would still be illegal as a violation of the federal due process guarantee imposed on the states by the Fifth and Fourteenth Amendments. Basic principles of due process require that that a person undertaking a judicial function be impartial. Speaking of administrative hearings, and articulating the procedural requirements "demanded by rudimentary due process" in that setting, the United States Supreme Court has said that, "of course, an impartial decision maker is essential." *Goldberg v. Kelly*, 397 U.S. 254, 267, 271, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). This principle applies with even greater force to persons appointed with the power of the judiciary. *In re Murchison,* 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). The Washington State courts have ruled repeatedly that the same requirements for the appearance of impartiality that apply to judges also apply to inferior adjudicators such as members of planning commissions. *Buell v. City of Bremerton,* 80 Wn.2d 518, 525, 495 P.2d 1358 (1972). Notably, Respondent **does not contest** that the appointment of Maxeiner was a violation of Viveca's due process rights, hoping that this Court will ignore the issue. It should not do so.

Exh. 24.

The Washington State Supreme Court's response to these due process concerns was an order requiring her to pay thousands of dollars in sanctions directly to the Supreme Court and cutting off her appellate rights if she did not do so. Exh. 25. Viveca had no prior notice or warning of these sanctions, explanation as to why they were imposed, or opportunity to be heard.

The response of the Washington State Supreme Court to Viveca's unopposed contention that the appointment of Maxeiner violated her constitutional rights—imposing a fine payable to the court without notice, an opportunity to address the fine, or an explanation—demonstrates that eight of the members of the Washington State Supreme Court will not in good faith address any constitutional claims concerning the corrupt appointment of the accountant Maxeiner.

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The divorce litigation spawned other litigation as well. While the divorce was ongoing, Viveca engaged Respondent to mount an additional lawsuit seeking to partition the assets in the divorce that Judge Thibodeau had either left unallocated or had been hidden by Sassan. Though Washington State's published case law is crystal-clear that such lawsuits are proper and not subject to *res judicata* or collateral estoppel, the Court of Appeals ignored its binding precedents and held that *res judicata* barred the lawsuit. A federal challenge to Washington State Court's illegal disqualification of Respondent was dismissed for lack of jurisdiction on *Rooker-Feldman* grounds.[2] Sassan was also successful in enlisting a federal court judge to bar Viveca and Respondent from mounting any challenges to Maxeiner's performance of the tasks assigned by Judge Thibodeau. That case is effectively stayed; the merits of the federal judge's orders have never been litigated before the Ninth Circuit Court of Appeals, because no final judgment has ever been entered.

C. The Proceedings Under Review

As instructed by the Washington State Supreme Court, the Washington State Bar Association instigated a disciplinary proceeding against Respondent. All of the charges relate to actions Respondent took to attack Maxeiner's appointment directly or indirectly. The Association appointed as a Hearing Officer Joseph Mano, a private attorney who makes his living as a special purpose judicial officer in multiple courts and tribunals. F. Sanai Decl. ¶11.

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[2] The district court judge in that suit relied on erroneous Ninth Circuit precedent which held that *Rooker-Feldman* bars federal lawsuits which seek to challenge determinations of lower court actions. While an appeal of the district court's decision was awaiting, the United States Supreme Court issued its decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), which held that *Rooker Feldman* does not apply when the federal litigation is initiated while the state litigation in question is ongoing. "*Exxon Mobil* makes clear that the *Rooker/Feldman* doctrine precludes federal district court jurisdiction only if the federal suit is commenced after the state court proceedings have ended. *See id.* at 1527 ("[N]either *Rooker* nor *Feldman* supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment on the same or related question while the case remains sub judice in a federal court.")" *Dornheim v. Sholes*, 430 F.3d 919, 923 (8th Cir. 2005). However, there was no

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

Respondent was initially represented by counsel Lee Street and Cyrus Sanai in association with Mr. Street. The initial hearing was called off when Mr. Street had to withdraw due to serious illness. Cyrus again applied for admission *pro hac vice*, this time in association with Respondent, and was denied. None of the reasons for denial arose from a conflict of interest or counsel's lack of qualification as a lawyer. *See* Exh. 15. Respondent was unable to obtain counsel able to become familiar with this case at this late date. F. Sanai Decl.¶27

Respondent also propounded various requests for admission against the association. The requests for admission included the following:

> 9. Washington state statutes require that any person appointed as a judicial referee be sufficiently impartial, in appearance and in fact, that such person could function is a juror in the case in which the person is to be appointed as a referee.
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> 10. It is a violation of a private litigant's fundamental due process right if a person employed by an opposing party serves as a judicial officer in such litigation.
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> 11. It is a violation of a private litigant's fundamental due process right if a person then employed as a paid professional of an opposing party simultaneously serves as a judicial officer in a lawsuit between the private litigant and the opposing party.
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> 12. Any proceeding which violates a litigant's fundamental due process rights is void.
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> 13. Any order which violates a litigant's fundamental due process rights is void.
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> 14. Any transfer of property of a litigant which violates a litigant's fundamental due process rights is void.
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> 15. Philip Maxeiner was a witness in the divorce trial of Viveca Sanai and Sassan Sanai.
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> 16. Philip Maxeiner was at the time of the trial and thereafter the accountant of Sassan Sanai and his medical corporation.

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opportunity to properly raise the issue before the Ninth Circuit, which affirmed the district court based on a case that was decided after *Exxon Mobil*.

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660 2nd Street No. 7
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Fax: (503) 434-7553

17. Judge Thibodeau appointed Philip Maxeiner as a special master in the divorce trial.

18. The duties and powers which Judge Thibodeau ordered Philip Maxeiner to perform and to have were those of a judicial referee, not a special master.

19. The Washington State Court of Appeal held that Philip Maxeiner was in fact a judicial referee.

20. Fredric Sanai, on behalf of Viveca Sanai, and Viveca Sanai in a pro se capacity, challenged the appointment of Philip Maxeiner as a special master before the Washington State Court of Appeals on the grounds, inter alia, that his appointment was a violation of her fundamental due process rights.

21. Viveca Sanai in a pro se capacity, challenged the appointment of Philip Maxeiner as a judicial referee before the Washington State Court of Appeals on the grounds, inter alia, that his appointment was a violation of her fundamental due process rights.

22. The Washington State Court of Appeals refused to address the argument presented to them that the appointment of Philip Maxeiner by Judge Thibodeau was a violation of Viveca's fundamental due process rights.

23. The Washington State Court of Appeals imposed sanctions and attorneys fees on Viveca Sanai for arguing in her appeal, *inter alia*, that Philip Maxeiner's appointment was a violation of her fundamental due process rights.

24. The Justices of the Washington State Court of Appeals who were presented with Viveca's challenge to the appointment of Philip Maxeiner have deliberately ignored the argument.

25. The Washington State Court of Appeals punished Viveca by imposing attorneys fees for arguing in her appeal that Philip Maxeiner's appointment was a violation of her due process rights.

26. Viveca Sanai in a *pro se* capacity, challenged the appointment of Philip Maxeiner as a special master before the Washington State Supreme Court on the grounds, inter alia, that his appointment was a violation of her fundamental due process rights.

27. The Washington State Supreme Court punished Viveca Sanai for filing a petition for review of the Court of Appeal's validation of Philip Maxeiner's appointment as a judicial referee by imposing fine payable to the Supreme Court.

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

28. The Washington State Supreme Court punished Viveca Sanai for filing a petition for review of the Court of Appeal's validation of Philip Maxeiner's appointment as a judicial referee by imposing a fine payable to the Supreme Court without notice that the fine was under consideration.

29. The Washington State Supreme Court punished Viveca Sanai for filing a petition for review of the Court of Appeal's validation of Philip Maxeiner's appointment as a judicial referee by imposing fine payable to the Supreme Court without an opportunity to be heard concerning the fine.

30. The Washington State Supreme Court punished Viveca Sanai for filing a petition for review of the Court of Appeal's validation of Philip Maxeiner's appointment as a judicial referee by imposing a fine payable to the Court that violated Viveca Sanai's fundamental due process rights.

31. Fredric Sanai was engaged by Viveca Sanai to file an appellate challenge of Judge Thibodeau's decision in the divorce proceedings between her and Sassan Sanai.

32. Judge Thibodeau disqualified Fredric Sanai from representing Viveca on the grounds, inter alia, that there was a conflict of interest arising from Fredric's lawsuit against Sassan Sanai.

33. There is in fact and under the law no conflict of interest for an attorney to represent a client against an adversary when the attorney is simultaneously suing the adversary.

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36. Judge Thibodeau disqualified Fredric Sanai from representing Viveca on two grounds: first, that there was a conflict of interest arising from Fredric's lawsuit against Sassan Sanai.

37. Fredric's lawsuit against Sassan Sanai did not as a matter of law constitute a conflict of interest barring him from representing Viveca Sanai.

38. A party in litigation has a right to counsel of his or her choice, subject to application of written rules of conflict of interest.

39. Judge Thibideau's disqualification of Fredric Sanai violated Viveca Sanai's due process rights.

40. Judge Thibideau's disqualification of Fredric Sanai violated Fredric Sanai's due process right by removing him from the case arbitrarily.

Exh. 5.

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

These contentions lay out the core of Respondent's constitutional claim: that his litigation conduct was a justified effort to overturn the corrupt judicial act of appointing the servant of a litigant (Philip Maxeiner) as a judicial officer. Under CR 36, which applies to disciplinary proceedings pursuant to ELC 10.11(b), "a party who considers that a matter of which an admission has been requested presents a genuine issue for trial or a central fact in dispute may not, on that ground alone, object to the request; he may, subject to the provisions of rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it." Despite the crystal-clear rule, the hearing officer issued an order relieving the Association from any obligation whatsoever to answer these requests. Exh. 6. Indeed, he ruled that a number of the constitutionally-related contentions set forth above were irrelevant to his consideration of the case. So rather than denying the requests and providing an explanation as to the position of the Washington State Bar Association, the hearing officer completely excluded Respondent's constitutional contentions from the hearing and held that several key constitutional contentions were "irrelevant".

The hearing officer also issued an order barring pre-trial discovery from any judicial officials without his prior consent. When Respondent tested the order by requesting that subpoenas be authorized from two jurists who had knowledge of the underlying facts and one who had recused himself in order to write an article addressing the ongoing litigation, the hearing officer denied them on the grounds that no testimony whatsoever from judicial officials would be admitted into the hearing. Exh. 7.

The hearing officer has been unable to procure an attorney who would be able to master the complicated history of this case in time for the hearing. F. Sanai Decl. ¶27; Exh. 31. Even if he were able to do so, he has been effectively barred from calling the witnesses necessary to prove his case.

Respondent does not have the actual *bona fide* opportunity to adequately present his contentions for the following reasons.

Fredric Sanai
660 2nd Street No. 7
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Fax: (503) 434-7553

In the divorce litigation the Washington State courts violated Viveca's due process right to counsel of her choice. After Respondent was barred from assisting her, she pressed on with her appeal in a *pro se* capacity with assistance from out-of-state counsel. Viveca presented her constitutional contentions to the Washington State Supreme Court: rather than considering them in good faith, the Court imposed, without notice or opportunity to be heard, or an explanation, a fine payable to the Court itself that it knew she could not pay, and thereafter stripped her of her appellate rights. Exh. 25.

Because Respondent was barred from participating in and did not participate in Viveca's petition for review, he is not bound by collateral estoppel or any other doctrine from raising the constitutional arguments which every Washington State-based court has refused to address. He has an absolute constitutional right to have his constitutional claims adequately and fairly adjudicated, but it is clear from the Washington State Supreme Court's prior handling of the issue that this will not happen. The Supreme Court's response to a facially-meritorious due process challenge to the appointment of a servant and employee of a litigant as a special purpose judicial officer, which was to *sua sponte*, without notice or opportunity to be heard, or an explanation, impose sanctions it knew she could not pay and strip her of her appellate rights, is the strongest evidence (short of an admission in a deposition) that a majority of the justices of the Court would never permit anyone to adequately present the issue of Snohomish County Superior Court Judge Thibodeau's corrupt appointment of Maxeiner. In addition, Mr. Mano has explicitly ruled that the handling by the appellate court's of Viveca's challenge is "irrelevant." Exh. 6. By so doing, the Hearings Officer demonstrated that he will not permit arguments or evidence concerning the constitutional legitimacy of the underlying proceedings.

1. The Last-Minute Deprivation of Counsel Makes it Impossible for Respondent to Have his Claims Adequately Presented

The Supreme Court and all of the Courts of Appeals to address the "right to counsel" have held that it means the right to counsel of one's choice, even if such counsel has

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

not been admitted in the particular jurisdiction. In the case of the Sixth Amendment, the right to counsel has two components; a right to counsel of one's choice paid by the defendant, and in the alternative a right to counsel appointed and paid for by the state. The Fifth Amendment's Due Process Clause (and in state courts, the Fourteenth Amendment) guarantee civil litigants the right to counsel of their choice. *McCuin v. Tex. Power & Light Co.*, 714 F.2d 1255, 1262 (5th Cir.1983) (*citing Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1118 (5th Cir.1980)); *Powell v. Alabama,* 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932)); *In re BellSouth, supra*, 334 F.3d 941, 975 (11th Cir. 2003) (Tjoflat, J., dissenting). There are limitations, of course:

> The right to counsel does not, however, entail absolute freedom of choice. Counsel must be a member of the bar and must be admitted to practice before the court in which he appears. He must not have a conflict of interest with another party. His employment must not entail disclosure of confidential information.

McCuin, supra, 714 F.2d at 1263.

Last year the United States Supreme Court affirmed that the right to counsel of one's choice includes the right to have counsel from other states admitted *pro hac vice*. In *United States v. Gonzalez Lopez*, 126 S.Ct. 2557 (2006), the United States Supreme Court was faced with a situation similar to that here: a criminal defendant in Missouri desired to have counsel of his choice, a California attorney, admitted *pro hac vice*, and the district court repeatedly denied the request. The district court denied the request on the grounds that the attorney had contacted the defendant while the defendant was represented by local counsel, thereby violating local rules. The defendant challenged his conviction on the grounds that his right to counsel was violated. The United States Supreme Court agreed, holding that it was a violation of the constitutional right to counsel of one's choice to deny admission of an attorney *pro hac vice*, and that such error did not demand a showing of prejudice. The Supreme Court also made clear that the only basis for denying admission *pro hac vice* is (a) a bona fide conflict of interest, or (b) that the person whose admission is being requested is not admitted to practice law. There is no other legitimate basis for denial of the right.

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

Courts have extremely limited grounds for barring a litigant from utilizing counsel of his or her choice. The only legitimate grounds are that the person is not qualified to practice law in a jurisdiction of the United States, or that there would be a *bona fide* conflict of interest with another party if that counsel were to participate in the litigation. In the attorney-client context, a conflict of interest ordinarily means (a) there is a possibility that one client's confidential information could be utilized to its detriment by the attorney in other proceedings, or (b) the attorney is simultaneously giving advice to two persons with opposing interests. These are the **only** reasons that a person may be denied counsel of his choice. *McCuin, supra,* 714 F.2d at 1263.

None of the grounds asserted by the hearings officer meet the constitutional criteria for denying Respondent his choice of counsel. Denial of choice of counsel is so serious and irreparable that it requires automatic reversal of a trial court judgment. *Gonzalez Lopez, supra.* Moreover, the last minute deprivation was obviously intended to inflict the maximum amount of prejudice to Respondent.

2. The Hearing Officer's Complete Exclusion of the Constitutional Claims from the Proceedings and Denial of All Relevant Depositions Makes Fair Presentation of the Constitutional Claims Impossible

Respondent presented requests for admission that presented his core constitutional contentions. Under the relevant discovery rules, the Bar Association's counsel was entitled to deny them with an explanation. Instead, the hearing officer completely relieved Bar Association from having to make any response at all. He also issued an order that essentially made depositions of judicial officers off-limits whether or not such officers were willing to testify.

While there was no assurance that the requested depositions of federal judicial officers would have been complied with or even enforced, that was an issue that could only be properly determined once the subpoena was issued. Here, even if the relevant judicial officers had been willing to testify, the hearing officer would not have permitted the deposition to go forward.

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

Further, the hearing officer relieved the Bar Association's counsel from providing any response to the requests for admission (as opposed to what the rules require, which is a denial **and** an explanation), and explicitly held that he would not admit any judicial testimony.

The hearing officer's refusal to allow judicial testimony in the proceedings, combined with his exclusion of the due process-related admissions, demonstrates that Respondent does not have an adequate opportunity to defend himself.

3. Financial Interest

The United States Supreme Court has held that financial interest of a judge in litigation, in addition to bad faith or harassment, is one of the extraordinary circumstances which invalidates a state court administrative or judicial tribunal's decision as a violation of the Fourteenth Amendment:

> ...the State Board of Optometry was incompetent by reason of bias to adjudicate the issues pending before it. If the District Court's conclusion was correct in this regard, it was also correct that it need not defer to the Board. Nor, in these circumstances, would a different result be required simply because judicial review, de novo or otherwise, would be forthcoming at the conclusion of the administrative proceedings. *Cf. Ward v. Village of Monroeville*, 409 U.S. 57 (1972).
>
> ...
>
> It is sufficiently clear from our cases that those with substantial pecuniary interest in legal proceedings should not adjudicate these disputes. *Tumey v. Ohio*, 273 U.S. 510 (1927). And *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), indicates that the financial stake need not be as direct or positive as it appeared to be in *Tumey*. It has also come to be the prevailing view that "[m]ost of the law concerning disqualification because of interest applies with equal force to . . . administrative adjudicators." K. Davis, Administrative Law Text 12.04, p. 250 (1972), and cases cited. The District Court proceeded on this basis and, applying the standards taken from our cases, concluded that the pecuniary interest of the members of the Board of Optometry had sufficient substance to disqualify them, given the context in which this case arose.

Gibson v. Berryhill, 411 U.S. 564, 577-579 (1973)(footnotes omitted).

In *Gibson v. Berryhill*, the Supreme Court held that an injunction would lie against an administrative professional disciplinary body whose members were likely to obtain additional business if the practices of the plaintiff optometrist were held to be illegal. The Supreme Court

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

held that such financial interest in the outcome of the administrative proceedings was significant enough to mandate an injunction against the proceedings.

The financial interest of the judicial officers in this case, on the other hand, is objectively demonstrable. Respondent challenged a practice that lines the pockets of judges in Washington (and states with similar practices, such as Nevada). A judge has an impermissible financial interest in litigation if the outcome of the litigation would directly affect the judge's prospects for obtaining money. In *Aetna Life Ins. Co. v. Lavoie*, 475 US 813 (1986), the United States Supreme Court held that a state supreme court judge who decided an appeal involving a legal issue affecting the judge's own separate lawsuit violated the Fourteenth Amendment's due process guarantee. Indeed, a number (though not all) of state courts have held that a judge may not adjudicate a lawsuit the outcome of which could affect the judge's financial status, property, or business interests. *See, e.g. North Bloomfield G.M. Co. v. Keyser,* 58 Cal. 315, 323 (1881) (case before judge would affect contamination of judge's real property); *Grafton v. Holt,* 58 W. Va. 182 , 52 S.E. 21 (1905) (dispute concerned utility fees payable by class of persons including judge). In the administrative context, the mere potential for financial benefit by the tribunal members if professional discipline were imposed on an optometrist was found sufficient to overcome *Younger* abstention and merit equitable relief. *See Gibson, supra.*

Hearings Officer Mano is an attorney residing in Lewis County as well, who wears multiple judicial hats. He acts as a hearing officer for the Bar Association, sits on multiple district courts in Lewis County, and his firm still maintains the name of a Lewis County Superior Court judge, Nelson Hunt, on much of its advertising and registrations. He is by profession a "special purpose judicial officer", as well as a member of the inner circle of attorneys with close enough connections to the judiciary to have employees of his clients appointed as special purpose judicial officers in cases where Mano is counsel. Mr. Mano has no financial disclosure obligations.

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

The general counsel of the Bar Association has admitted that if Respondent's constitutional claims are successful, there will be a "substantial" effect on the ability of the Washington State Supreme Court to maintain its disciplinary system as a check against due process challenges to its practices. Once of the "substantial" effects will be limitations on the kinds of cases Hearings Officer Mano may hear, thus potentially reducing his income as a hearing officer. Further, if Respondent's constitutional contentions are successful, the ability of Mr. Mano, his judicial colleague Mr. Buzzard, and all of the other attorneys in Washington State whose careers are based on their occupancy of judicial and advocacy roles simultaneously will be severely compromised. Accordingly, Mr. Mano has at least as much of a financial interest in ensuring that Respondent's constitutional claims are not heard as did the Board of Optometrists in *Gibson, supra.*

VI. Ninth Circuit Appeals.

The final judgment in the two federal cases presided over by Judge Zilly are currently under appeal. The deadline for filing the opening brief in one occurs at the end of this month, and in the other in the middle of April. *Sanai v. Sanai*, Ninth Cir. Docket No. 07-36001, *Sanai v. Sanai*, Ninth Cir. Docket No. 07-36002.

If Respondent prevails in these appeals, than much of the grounds for the Hearing Officer's opinion will disappear, requiring a revaluation of the result.

VII. Oral Argument.

Respondent requests oral argument, and telephoned to confirm this with the Clerk.

Respectfully submitted this 9th day of March, 2008.

Fredric Sanai

Fredric Sanai, WSBA 32347

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, Oregon 97034
Telephone: (503) 434-7502
Fax: (503) 434-7553

EXHIBIT 1

The New York Times

September 25, 2006

In Tiny Courts of New York, Abuses of Law and Power

By WILLIAM GLABERSON

Some of the courtrooms are not even courtrooms: tiny offices or basement rooms without a judge's bench or jury box. Sometimes the public is not admitted, witnesses are not sworn to tell the truth, and there is no word-for-word record of the proceedings.

Nearly three-quarters of the judges are not lawyers, and many — truck drivers, sewer workers or laborers — have scant grasp of the most basic legal principles. Some never got through high school, and at least one went no further than grade school.

But serious things happen in these little rooms all over New York State. People have been sent to jail without a guilty plea or a trial, or tossed from their homes without a proper proceeding. In violation of the law, defendants have been refused lawyers, or sentenced to weeks in jail because they cannot pay a fine. Frightened women have been denied protection from abuse.

These are New York's town and village courts, or justice courts, as the 1,250 of them are widely known. In the public imagination, they are quaint holdovers from a bygone era, handling nothing weightier than traffic tickets and small claims. They get a roll of the eyes from lawyers who amuse one another with tales of incompetent small-town justices.

A woman in Malone, N.Y., was not amused. A mother of four, she went to court in that North Country village seeking an order of protection against her husband, who the police said had choked her, kicked her in the stomach and threatened to kill her. The justice, Donald R. Roberts, a former state trooper with a high school diploma, not only refused, according to state officials, but later told the court clerk, "Every woman needs a good pounding every now and then."

A black soldier charged in a bar fight near Fort Drum became alarmed when his accuser described him in court as "that colored man." But the village justice, Charles A. Pennington, a boat hauler and a high school graduate, denied his objections and later convicted him. "You know," the justice said, "I could understand if he would have called you a Negro, or he had called you a nigger."

And several people in the small town of Dannemora were intimidated by their longtime justice, Thomas R. Buckley, a phone-company repairman who cursed at defendants and jailed them without bail or a trial, state disciplinary officials found. Feuding with a neighbor over her dog's running loose, he threatened to jail her and ordered the dog killed.

"I just follow my own common sense," Mr. Buckley, in an interview, said of his 13 years on the bench. "And the hell with the law."

The New York Times spent a year examining the life and history of this largely hidden world, a constellation of 1,971 part-time justices, from the suburbs of New York City to the farm towns near Niagara Falls.

It is impossible to say just how many of those justices are ill-informed or abusive. Officially a part of the state court system, yet financed by the towns and villages, the justice courts are essentially unsupervised by either. State court officials know little about the justices, and cannot reliably say how many cases they handle or how many are appealed. Even the agency charged with disciplining them, the State Commission on Judicial Conduct, is not equipped to fully police their vast numbers.

But The Times reviewed public documents dating back decades and, unannounced, visited courts in every part of the state. It examined records of closed disciplinary hearings. It tracked down defendants, and interviewed prosecutors and defense lawyers, plaintiffs and bystanders.

The examination found overwhelming evidence that decade after decade and up to this day, people have often been denied fundamental legal rights. Defendants have been jailed illegally. Others have been subjected to racial and sexual bigotry so explicit it seems to come from some other place and time. People have been denied the right to a trial, an impartial judge and the presumption of innocence.

In 2003 alone, justices disciplined by the state included one in Montgomery County who had closed his court to the public and let prosecutors run the proceedings during 20 years in office. Another, in Westchester County, had warned the police not to arrest his political cronies for drunken driving, and asked a Lebanese-American with a parking ticket if she was a terrorist. A third, in Delaware County, had been convicted of having sex with a mentally retarded woman in his care.

New York is one of about 30 states that still rely on these kinds of local judges, descendants of the justices who kept the peace in Colonial days, when lawyers were scarce. Many states, alarmed by mistakes and abuse, have moved in recent decades to rein in their authority or require more training. Some, from Delaware to California, have overhauled the courts, scrapped them entirely or required that local judges be lawyers.

But New York has no such requirement. It demands more schooling for licensed manicurists and hair stylists.

And it has left its justices with the same powers — more than in many states — even though governors, blue-ribbon commissions and others have been denouncing the courts as outdated and unjust since as far back as 1908, when a justice in Westchester County set up a roadside speed trap, fining drivers for whatever cash they were carrying.

Nearly a century later, a 76-year-old Elmira man who contested a speeding ticket in Newfield, outside Ithaca, was jailed without even a warning for three days in 2003 because he called the sheriff's deputy a liar.

"I thought, this is not America," said the man, Michael J. Pronti, who spent two years and $8,000 before a state appeals court ruled that he had been improperly jailed.

'Justice in the Dark'

It is tempting to view the justice courts as weak and inconsequential because the bulk of their business is traffic violations. Yet among their 2.2 million cases, the courts handle more than 300,000 criminal matters a year. Justices can impose jail sentences of up to two years. Even in the smallest cases, some have wielded powers and punishments far beyond what the law allows.

The reason is plain: Many do not know or seem to care what the law is. Justices are not screened for competence, temperament or even reading ability. The only requirement is that they be elected. But voters often have little inkling of the justices' power or their sometimes tainted records.

For the nearly 75 percent of justices who are not lawyers, the only initial training is six days of state-administered classes, followed by a true-or-false test so rudimentary that the official who runs it said only one candidate since 1999 had failed. A sample question for the justices: "Town and village justices must maintain dignity, order and decorum in their courtrooms" — true or false?

The result, records and interviews show, is a second-class system of justice.

The first class — the city, county and higher courts — is familiar to anyone who has served on a jury or watched "Law & Order": hardly perfect, but a place of law-schooled judges, support staffs and strict rules. The lower and far larger rung of town and village courts relies on part-time justices, most of them poorly paid, some without a single clerk. Those justices — two-thirds of all the state's judges — are not required to make transcripts or tape recordings of what goes on, so it is often difficult to appeal their decisions.

When they stray badly, the Commission on Judicial Conduct — a panel of lawyers, judges and others — can do little more than try to contain the damage.

Some 1,140 justices have received some sort of reprimand over the last three decades — an average of about 40 a year, either privately warned, publicly rebuked or removed. They are seriously disciplined at a steeper rate than their higher-court colleagues.

The Office of Court Administration, which runs the state court system, makes little pretense of knowing much about what happens in the justice courts. Beyond their names, ages and addresses, it has little information about the justices. Because they are paid by the towns and loosely tied into the court system, "we have limited administrative control, and very, very limited financial control," said Jan H. Plumadore, the deputy chief administrative judge for all courts outside New York City.

The courts also handle money — more than $200 million a year in fines and fees. But the state comptroller's office, which once conducted scores of justice-court audits every year, now does only a handful. When it looked most recently, auditing a dozen courts in May, it reported serious financial-management problems and estimated that millions of dollars a year might be missing from the justice courts statewide.

Norman P. Effman has been the public defender for 16 years in Wyoming County, where he said only one of the 37 justices was a lawyer. In testimony last year, he described the justice courts as a forgotten realm: a "closed door, back of someone's house, in the barn, in the highway department, no record" justice

system.

"The reality is," he told a state commission, "if you keep justice in the dark, it stays in the dark."

That commission, which was studying how the court system treats poor people, issued a study in June saying the justice courts remained "a fractured and flawed system." And in recent days, the Office of Court Administration has said it plans to begin addressing some of those failings — for instance, taking steps to double the amount of initial training and to ensure that proceedings are recorded.

But those measures do not address some of the most serious problems: the use of justices who are not lawyers, and the state's weak oversight.

This is not the first time the justice courts have come under scrutiny. "Probably the most unsatisfactory feature of the administration of criminal law remaining in the state today is the obsolete and antiquated institution known as the justice of the peace," another state commission concluded.

The year was 1927.

A Record of Trouble

Certainly, there are worthy justices, and defenders of the system say the good far outnumber the bad. Those supporters, chiefly the justices themselves and the local political leaders who often select them, contend that hometown judges know the hometown problems — and the problem people — and can tailor common-sense solutions.

And, they have argued, putting lawyers in charge of all the courts could cost the state tens of millions of dollars.

"It is the most efficient, low-cost method of ensuring that the people of the state receive justice," said Thomas R. Dias, a town justice in Columbia County who is president of the State Magistrates Association, the justices' organization.

But the record shows otherwise in hundreds of disciplinary cases — most of them unknown to the public.

In the Catskills, Stanley Yusko routinely jailed people awaiting trial for longer than the law allows — in one case for 64 days because he thought the defendant had information about vandalism at the justice's own home, said state officials, who removed him as Coxsackie village justice in 1995. Mr. Yusko was not even supposed to be a justice; he had actually failed the true-or-false test.

Outside Rochester, in Le Roy, a justice who is still in office concocted false statements, state officials said, to help immigration officials deport a Hispanic migrant worker in 2003. Although the man had pleaded not guilty to trespassing, the town justice, Charles E. Dusen, issued a court order saying he had been convicted. In an interview, Justice Dusen said he tried to right his wrong after the worker's lawyer complained. But the man was still deported.

Last December, disciplinary officials disclosed that in a five-year period, a Rochester-area justice had mistakenly imposed $170,000 in traffic fines beyond what the law allowed. And in June, a justice in

western New York was disciplined for threatening to jail a man — and warning him to "bring a couple thousand in bail money" — over a complaining phone message the man had left him.

Even the commuter towns around New York City, where the justices are typically lawyers, have endured the system's abuses.

In Mount Kisco, people who asked for the court's sympathy were treated to sarcasm: Justice Joseph J. Cerbone would pull out a nine-inch violin and threaten to play. Mr. Cerbone phoned one woman and talked her out of pressing abuse charges against the son of former clients, state records show. But it took eight years, and evidence that he had taken money from an escrow account, before the State Court of Appeals removed him in 2004 after a quarter-century in office.

In interviews, many of these justices disputed the findings against them, saying the Commission on Judicial Conduct was unfair and determined to end the justice courts.

Commission officials say they have no such agenda.

And the agency is struggling itself. Charged with policing all the state's courts, it can do no more than respond to complaints. Its staff has shrunk by more than half in the last two decades, with just two investigators for the western half of the state.

So commission officials were surprised to learn last year that a western New York justice who had resigned while facing disciplinary charges was back on the bench.

The commission twice disciplined the town justice, Paul F. Bender of Marion, for deriding women in abuse cases. Arraigning one man on assault charges, he asked the police investigator whether the case was "just a Saturday night brawl where he smacks her and she wants him back in the morning."

But the commission spared him removal in 1999 because he was not seeking re-election. Four years later Mr. Bender ran again anyway, unbeknownst to the commission, for a term that will not expire until 2007.

Robert H. Tembeckjian, the commission's administrator, said, "Our working assumption is, a judge who resigns while under disciplinary charges by the commission is not going to return to the bench." But he would not say whether his agency would — or could — take any action against Justice Bender.

'I'm Not a Lawyer'

A 17-year-old girl had stayed out all night, then fought with her family and wound up facing a harassment charge in court in Alexandria Bay, a busy tourist village on the St. Lawrence River. The justice, Charles A. Pennington, a boat hauler with 23 years on the bench, took her not-guilty plea on a Sunday in 2003.

But when told that the girl had no place to go, the judge did not send her to a women's shelter or alert social service officials, as local justices typically do. He took her home.

"I left the court kind of in shock," a police officer later testified. "I've never heard of anything like this before."

The girl's mother, Keitha Rogers, said in an interview that she was appalled to find her daughter at the

home of the justice, then 61, as he sat drinking with another man. "Sure, he can tell the difference between the stern and the bow," Ms. Rogers said. "But what does that have to do with making major judgments about people's lives?"

The judicial conduct commission, which ordered Justice Pennington's removal last fall for this and other lapses, ruled that while there was no evidence he had made any improper advances toward the girl, who left after about an hour, he had shown "extraordinarily poor judgment."

And while Mr. Pennington argued that he had not been drinking, he did not entirely disagree with the findings. "Granted, there is mistakes," said the justice, who resigned before the commission ruled. "I'm not a lawyer."

Neither are most of his peers. And that is pretty much all the state knows about them. Office of Court Administration officials say the only way they usually find out a new justice has been elected is if local officials notify them.

For decades, the agency has asked justices to fill out modest biographical questionnaires, then filed away the answers. Under freedom of information law, The Times obtained questionnaires completed by more than 1,800 current justices; they portray a group that is often poorly educated and poorly paid, even though the law they are dealing with is increasingly complex.

Of those who are not lawyers, about a third — more than 400 — had no formal education beyond high school. At least 40 did not complete high school, though several went on to earn equivalency degrees.

Interviews with more than 60 justices made it clearer who many of these people are: retirees, farmers, mechanics, former police officers and others with flexible schedules or seasonal work. Most look something like Mr. Pennington: white, and graying. At least 30 justices are in their 80's, well beyond the mandatory retirement age, 70, for other New York judges.

Though the justices' pay is often meager — as little as $850 a year — they can set bail, a basic legal safeguard. They hold crucial preliminary hearings in felony cases and conduct trials on misdemeanors. They preside over civil cases with claims of up to $3,000, and landlord-tenant disputes with no dollar limit, including commercial cases involving hundreds of thousands of dollars.

And then there are the powers they simply take.

In what the Commission on Judicial Conduct called "a shocking abuse of judicial power," Justice Roger C. Maclaughlin single-handedly went after a man he decided was violating local codes on the keeping of livestock in Steuben, near Utica. The justice interviewed witnesses, tipped off the code-enforcement officer, lobbied the town board to deny the man approval to run a trailer park, then jailed him for 10 days without bail — or even a chance to defend himself, the commission said.

In an interview, Justice Maclaughlin said the commission seemed to be chasing legal technicalities rather than real justice.

An Essex County town justice, Richard H. Rock, jailed two 16-year-olds overnight without a trial, saying

he wanted "to teach them a lesson." They had been accused of spitting at two other people and charged with harassment. Then he sent them back for 10 more days, the commission said, without ever advising them they had a right to a lawyer.

In 2001, the commission punished him and Justice Maclaughlin with censure, the most serious penalty short of removal from the bench. Justice Maclaughlin is now in his 11th year in office. Justice Rock is in his 10th.

In Alexandria Bay, where Justice Pennington presided at a metal desk in a tiny room inside the police building, a quarter-century in office did not seem to deepen his understanding of his role. Just three days after he took home the 17-year-old girl, another case raised fresh questions about his familiarity with the law, or even the world outside his court.

Eeric D. Bailey, a 21-year-old black soldier from nearby Fort Drum, was facing a disorderly conduct charge after a tussle with a white bar bouncer. Sitting three feet from Mr. Bailey, the bouncer identified him as "that colored man." Mr. Bailey's jaw dropped.

The soldier, who did not have a lawyer, told the judge that the term was offensive. But Justice Pennington said that while certain other words were racist, "colored" was not. "For years we had no colored people here," he said.

The commission had heard worse. After arraigning three black defendants arrested in a college disturbance in 1994, a justice in the Finger Lakes region said in court, "Oh, it's been a rough day — all those blacks in here." A few years before that, a Catskill justice reminisced in court that it was safe for young women to walk around "before the blacks and Puerto Ricans moved here."

In an interview, Justice Pennington said the commission had treated him unfairly. But he may not have helped his case when he told the commission that "colored" was an acceptable description.

"I mean, to me," he testified, "colored doesn't preferably mean black. It could be an Indian, who's red. It could be Chinese, who's considered yellow."

Basic Training

As the blunders, and worse, have piled up over the years, so have the muffled complaints from within the system. Transcripts of the commission's disciplinary hearings, which are usually closed to the public, show that some justices have nearly begged for more training, or any kind of help.

Anthony Ellis, a meat cutter who routinely jailed defendants in Tupper Lake to coerce them into pleading guilty, neatly summed up his insecurities in one closed hearing: "I'm almost like a pilot flying by the seat of my pants."

William G. Mayville, a retired factory worker who turned his courtroom in nearby Fort Covington into a collection agency for local business owners, offered a quietly damning explanation: "I certainly am only a simple man doing a job that, you know, the very best I can do with a limited amount of education that they offered me."

Simple men, and their simple wisdom, are the whole idea behind the justice courts. A 13th-century English institution, the justice of the peace was imported to the colonies in the 1600's along with a fundamental notion: that laymen could settle small-bore cases with practical solutions grounded in local custom or common sense.

But as life, and the law, became vastly more complex by the mid-20th century, several states, including California, New Jersey and Connecticut, created more professional local courts.

In Delaware, where the appointed local magistrates have less authority than New York's justices, the state screens candidates with academic and psychological tests, and starts them off with 11 weeks of training. "It is a reflection of the view that when we're dealing with people's livelihood, when we're dealing with people's freedom, we're going to take this seriously," said the chief magistrate, Alan G. Davis, a lawyer.

In New York, the justice courts have been replaced by state-financed district courts, with lawyer judges, in Nassau County and western Suffolk County. But the last major calls for statewide reform sputtered out in the early 1980's, and the amount of training for justices has not changed. Those without law degrees must take six days of classes at the start. Lawyers do not have to attend, but all justices must take a 12-hour refresher course once a year.

Maryrita Dobiel, who runs the training program for the Office of Court Administration, said the classes provide an introduction to legal principles, but not much more, given a student body with such varying levels of education. "We have to teach to the lowest common denominator," she said. General principles of criminal law, a subject that takes up a semester or more in law school, gets about five hours.

At training's end, justices must score at least 70 percent on a test of 50 questions, all true or false. Those who fail can retake the course, and the test. "We don't decide whether they're qualified to be a judge," Ms. Dobiel said. "The people who have elected them have already made that decision."

The real test comes on the bench.

Several justices have threatened to arrest litigants in small-claims cases, showing they do not understand the difference between civil and criminal cases. Others have told the judicial conduct commission that they disagreed with the constitutional guarantee that a defendant is entitled to a lawyer.

John D. Cox, a quarry manager in Le Ray, near Watertown, summarily jailed people who were unable to pay fines, the commission said. But he received the lightest public penalty, an admonition, in 2002 after he explained that in 22 years in office, he had never been taught that state law allows defendants a new hearing and a lawyer when they say they cannot pay their fine.

The justices do have something of a lifeline: They can call a resource center near Albany where four lawyers field more than 18,000 questions a year. But there are limits on what the center tries to do.

"We tell them what their options are," said the center's supervisor, Paul Toomey. "We don't tell them they're wrong."

Power and Prejudice

Few people who came to his court ever told Donald R. Roberts he was wrong. A strapping former state trooper, he was working as a gas-company truck driver when he was appointed village justice in Malone, near the Canadian border, in 1993. When he was removed five years later, the Commission on Judicial Conduct dispatched him with a stinging description: "a biased, mean-spirited, bullying judge."

It was Justice Roberts who declared that women needed "a good pounding." He had already battled with the county district attorney over his resistance to granting orders of protection.

When a village resident asked that the dentist suing him be forced to come to court to prove his case, Justice Roberts told the man, who had a Hispanic surname: "You're not from around here, and that's not the way we do things around here." The justice did not mention that the plaintiff was his own dentist.

A common argument in favor of New York's justice courts is that local judges know the people and problems that come before them. But that can be a problem itself when justices use those prejudices to favor friends and ride herd over others.

"They have their own little fiefdoms," said Laurie Shanks, an Albany Law School professor. "Some are benevolent despots, but despots nonetheless."

Again and again, the commission's records show, justices have failed to remove themselves from cases involving their own families.

In this department, Pamela L. Kadur may hold a record. As town justice in Root, west of Schenectady, she presided over at least seven cases involving relatives, who often received lenient treatment, the commission said when it ordered her removal in 2003. Justice Kadur heard a speeding case against her son in her own kitchen, then tried to cover up their family relationship in record books, the commission said, by misspelling his last name.

One longtime town justice near Albany let a friend who owned a driving school sit with him at the bench; when the justice ordered anyone to take a driver-training course, only the friend's school was acceptable. Another justice, in Rensselaer County, told a trucker charged with drunken driving that he would not suspend his license because "I can't do that to a fellow truck driver."

Historically, large numbers of the justices have been former law enforcement officers, and lawyers complain that many have unfairly favored the police and prosecutors.

Some justices, unsure of the law, have also come to rely too much on the authorities. Elaine M. Rider, who presided in Waterville, near Utica, fretted that she did not "really have the time to puzzle this out" when a criminal defendant argued that evidence had been seized illegally. So she had the prosecutor write her decision, the commission said.

But one of the most common prejudices on view in the commission's files is far more basic, and it can be found as often in the big-city suburbs that have official-looking courthouses and lawyers on the bench.

In 20 years in office in Haverstraw, north of New York City in Rockland County, Justice Ralph T. Romano drew attention for his opinions on women, state files show. Arraigning a man in 1997 on charges that he had hit his wife in the face with a telephone, he laughed and asked, "What was wrong with this?"

Arraigning a woman on charges that she had sexually abused a 12-year-old boy, the justice asked his courtroom, "Where were girls like this when I was 12?"

Across the Hudson, Joseph Cerbone, the Mount Kisco justice with the miniature violin, persuaded a young woman to drop her abuse case against the son of a couple he had done legal work for. She told the commission that while she did not believe the justice's claim that the son was "a decent guy" who had "made a mistake," she had no choice.

"I kind of felt I had no one behind me, no support," she said. "And by getting a phone call from a judge, I felt that maybe I was making a mistake by going through with these charges."

But the human damage can be much worse in the small communities where the justice is often the most powerful local official.

In 11 years as justice in Dannemora, in the North Country, Thomas R. Buckley had his own special treatment for defendants without much money: Even if they were found not guilty, he ordered them to perform community service work to pay for their court-appointed lawyers, although defense lawyers and the district attorney had reminded him for years that the law guaranteed a lawyer at no cost.

"The only unconstitutional part," he told the commission before it removed him in 2000, "is for these freeloaders to expect a free ride."

He twice jailed David Velie, a 19-year-old charged with a misdemeanor, even though the law required him to set bail. In an interview, Mr. Buckley explained that the young man had been a troublemaker "ever since he was born."

Like many small-town justices, he said many of his decisions were down-to-earth solutions. "You've got to use your own judgment," he said. "That's why they call us judges. The law is not always right."

Some residents say that without the law to protect them, they lived in fear. Debra E. Bordeau, the justice's neighbor, said she went into hiding after he threatened to jail her in a dispute over her dog, which he ordered destroyed.

And Carson F. Arnold Sr., a contractor from a nearby town, was jailed for five days after a woman who knew Justice Buckley complained that Mr. Arnold had threatened her, the commission said. There was no trial. The justice simply told Mr. Arnold to shut up, then sentenced him without bail.

"How many years did he treat people like this?" Mr. Arnold asked in an interview. "How many people did this affect?"

A Culture of Secrets

The feeling of powerlessness often begins at the courthouse door.

Many justices preside in intimidatingly tight quarters, admitting participants one by one. Many have heard testimony, settled claims or ruled in criminal cases without notifying the prosecutor, lawyers or even the people directly involved. Some justices can be very selective, state records show: At a 1999

criminal trial in Kinderhook, south of Albany, Justice Edward J. Williams admitted everyone but the victim's lawyer.

Court sessions may be just as unpredictable — held infrequently or at odd hours, or canceled without notice. In 2004, the NAACP Legal Defense and Educational Fund found that people awaiting trial in Schuyler County in the Finger Lakes were jailed for months simply waiting for court to convene again. A high school student arrested on a minor drug charge in the summer of 2003, it said, was still sitting in jail in October.

But the biggest obstacle of all is pinning down what happens in the courtrooms.

A Rochester poverty lawyer, Laurie Lambrix, said that when she appealed the case of a mother of six — a black woman evicted in 1999 by a white landlord who she said had made racist comments — a justice in nearby Gates told her she could not examine the court file of her own client. "I knew court records were public records," Ms. Lambrix said. "I couldn't believe a judge would be ignorant of that."

She was lucky; at least there were records, which she eventually obtained. In many justice courts, it is next to impossible to reconstruct what happened. Some towns spring for a stenographer or taping system, and some justices try to scrawl notes while they preside. But in some cases, there are not even notes.

When someone does appeal, the law requires that justices write a summary of the case. Justices said in interviews that their decisions were rarely appealed, anyway, and even more rarely overturned.

The Commission on Judicial Conduct, then, remains the last line of oversight for justices, and only for those who have stirred up enough concern to be reported by a prosecutor, lawyer or citizen. But the panel is stretched thin — "persistently and acutely underfunded," as it lamented in one annual report. Its statewide staff, which numbered 63 in 1978 when it began, is down to 29.

Supporters of the justice courts have long maintained that they are no worse than the higher courts, citing commission statistics that show justices are disciplined at about the same rate as their higher-court colleagues. But responding to questions from The Times, commission officials studied the agency's three-decade record and found — to their surprise — that cases against local justices were more likely to result in serious punishments.

Although the justices make up about 66 percent of all New York judges, they constitute 76 percent of the 147 judges who have been removed from office.

Last year, six justices were publicly disciplined for the second time, more repeat offenders than ever. But Mr. Tembeckjian, the commission administrator, said the agency had no way to keep a closer eye on them.

"It would be in the public interest for the commission to make sure that a judge who was identified as having a problem has corrected it," he said. "But we simply don't have the resources to do it."

Lawrence S. Goldman, the commission's chairman until April, said all justices should be lawyers. His successor, the divorce lawyer Raoul Felder, would not discuss the quality of the justice courts, but predicted that a reckoning was at hand.

"This is something that's going to have to be addressed by the next governor," he said. "There is a controversy here, and this issue has not been addressed for many, many years."

Jo Craven McGinty contributed reporting.

EXHIBIT 2

The New York Times

September 26, 2006

Small-Town Justice, With Trial and Error

By WILLIAM GLABERSON

DUANE, N.Y. — Gary Betters thought he understood the law as well as any average American. A school psychologist, he wanted $1,588.60 he said the nearby village of Malone owed him for helping run a summer recreation program. When he brought a small claim in Duane Town Court, he expected that the judge would listen to both sides, then rule.

Like many others who go to court across New York State, he got a crash course in the strange ways of small-town justice.

Although no one showed up to defend the village, Justice William J. Gori started the trial anyway. Although the judge had Mr. Betters testify at length, he neglected to have him swear to tell the truth. And although Justice Gori told Mr. Betters he had another week to submit more evidence, the judge went ahead and decided the case anyway.

Mr. Betters received the news in a letter from the court: his case had been dismissed. No reason was given. "I cannot understand how a defendant can win when they don't even show up," he said in an interview.

The State Commission on Judicial Conduct figured out how. Justice Gori, it seems, had gone to the village offices in Malone before the trial, interviewed the village's chief witness, then informed the village lawyer that he had decided to throw out the case.

Justice Gori told the commission that he had never heard of the elementary legal rule that bars a judge, except in the most extraordinary circumstances, from secret contact with one side of a case. "It's not even explained in my manual," he said.

An unfamiliarity with basic legal principles is remarkably common in what are known as the justice courts, legacies of the Colonial era that survive in more than 1,000 New York towns and villages.

For generations, justices have hailed them as "poor man's courts," where ordinary people can get simple justice with little formality or expense. But there are few more vivid spots to view their shortcomings than here in one of New York's poorest corners: Franklin County, a place of rugged beauty on the Canadian border where only one of the 32 local justices is a lawyer.

The county's justices have repeatedly drawn the attention of state judicial conduct officials, with 15 publicly disciplined since the late 1970's, some twice. Justice Gori's errors pale in comparison with those of some others: One justice freed a rape suspect on bail as a favor to a friend. Another sentenced a welfare recipient to 89 days in jail after she failed to pay a $1.50 cab fare. Franklin County justices have presided drunk, fixed cases and denied lawyers to defendants. One failed to appoint a lawyer for a 19-year-old

mentally retarded alcoholic.

Here in Duane, a speck of a town in the center of the county, Justice Gori is in many ways a typical small-town New York justice.

A bricklayer and a former dog trainer with a high school education, he is an approachable man of 59, in jeans hitched up with suspenders. On Thursday nights he ambles down to the volunteer firehouse to hold court, such as it is. His grasp of the law is somewhat shaky. His temper sometimes gets the better of him.

He has no judge's bench, few law books and no court clerk. He is something of an accidental judge, occupying the position for nearly a decade largely because no one else wants it, people here say. Although state officials have reprimanded him twice for fundamental lapses in the conduct of his job, few Duane voters seemed to know or care. "Nobody's ever asked a question about it," Justice Gori said.

He seems well-intentioned enough. Like many justices, he describes his job as public service, and he says he studies the law for several hours every week.

But there is evidence that that may not be enough. When the judicial conduct commission called Justice Gori to account for his handling of Mr. Betters's case, his defense was startling, a transcript of the hearing shows. His own lawyer blamed the state for running the justice courts as it does: Judges, he said, with so little training — six days of classes, and a 12-hour refresher course once a year — could not possibly know the basic rules for handling a lawsuit.

The county's district attorney, Derek P. Champagne, says that when he took office five years ago, he had to drop hundreds of criminal cases because justices had failed to take any action for so long. Mr. Champagne says his staff of four full-time prosecutors is too small even to regularly visit the justice courts, which are separated by great distances.

Franklin County is bigger than Rhode Island. But it has only one higher court judge, in the county court in Malone. So the part-time town and village justices — plumbers, meat cutters and school bus drivers — are often the last word on the law here, with the power to issue search warrants, conduct trials, put some people in jail and let friends go free.

"The reality is, you basically have to have no qualifications other than be a voter to put someone in jail, and that's a very alarming situation," Mr. Champagne said. "To throw a layperson — some of whom don't have a high school degree — in that position is just a recipe for disaster."

A Night in Court

"Town of Duane Justice Court is now in session," Justice Gori announced.

Four bare fluorescent bulbs provided the only light in the roughly finished meeting room that becomes a court every few weeks. There was a portable bar against one wall, and a glimpse of the firehouse kitchen, with its jumble of old soda bottles and coffeepots. The American flag tacked to the wall had to be pulled back to allow the judge to get at the thermostat on this icy winter night.

At two pushed-together folding tables sat a nervous teenager, in court to answer speeding tickets, next to

his clench-jawed father. A state trooper, there as chief witness against the teenager, doubled as the court security officer.

And behind a battered wooden desk was Justice Gori. Fleshy, with eyes that water at sentimental moments, he was wearing an open brown shirt, his T-shirt visible at the neck.

The court computer that he bought with his own money was at home; it took him two months to figure out how to turn the thing on, he said. He had no judge's robe. They are too expensive, he said. His judicial salary is $3,750 a year.

"There are certain things that are lacking," he said.

He moved to Duane, population 159, from Saratoga County in his 40's after a divorce, enticed by the chance to hunt with his dogs.

"Maybe it's the solitude," said Justice Gori, who has since remarried. "You get up here at night, when the highway quiets down, you don't hear anything."

Yet people cross paths in Franklin County in unlikely and sometimes volatile ways: Mohawk Indians, the owners of lavish new vacation homes, Adirondack tourists and fishermen, and others who cross the border on less savory business. Drugs and domestic violence seem to be on the rise, and state prisons are big employers.

When Justice Gori moved here about 20 years ago, the prison construction boom offered jobs. After years as a dog trainer, "I picked up my tools and went back to the bricklaying, mason trade," he said.

Like a lot of newcomers to small towns, he wanted to get involved. But he didn't like the sight of blood, so that ruled out volunteer firefighting. He was attracted instead to the court in the weathered firehouse. "Law has always been kind of an interesting thing to me," he said.

That interest, however, does not include a fascination with the technicalities that occupy lawyers. "If you look at the laws, it's all common sense," he said.

Most of his work, since his first election in 1997, has been traffic cases. If there were many serious crimes in Duane, he said, they may have gone unnoticed out in the vast Adirondack nights. "Either we're a nice, quiet town or two people duked it out and one won and one lost, they got up and shook hands and nobody knows about it," he said.

There have been a handful of serious cases, the first phases of some felony prosecutions. Once, state troopers tracked him down on a bricklaying job. They said a local man was growing marijuana, and wanted a warrant to search his property. In the dust and cement, it fell to William Gori, dog trainer and mason, to put aside his tools and measure the rights guaranteed under the Constitution. "I sat down," he said. "Read everything. Looked at all the pictures." The troopers got their warrant.

In the makeshift courtroom on this winter night, he was warmly sympathetic to a woman who had forgotten to put the registration sticker on her windshield. Case dismissed.

But the teenager with the speeding tickets saw the stern Justice Gori. The boy had tickets in a half-dozen Franklin County towns, and his lawyer proposed combining the cases in another court.

No way. "What happens in the town of Duane," Justice Gori declared, "stays in the town of Duane."

That is not always true. The other case that drew the attention of the Commission on Judicial Conduct involved Lucille K. Millett, a Mohawk woman from the reservation that straddles the county's border with Canada. She was outside the Duane court one night in 2004 waiting for her sister, whom she had driven there for a traffic case. Justice Gori summoned Ms. Millett inside, asked for her driver's license and called the state police to run it through their computer.

In an interview, Ms. Millett said she was frightened and embarrassed; no one else was asked for a license. The only sense the sisters could make of it, she said, was that they were the only American Indians in court.

She filed a complaint with the commission, which ruled last year that Justice Gori had no right to demand anything of someone outside his court who faced no charges.

Asked about the case, Justice Gori denied that he harbored any prejudice. He said he thought he was acting within his authority.

"You learn by mistakes," he said. "They say this is improper, I don't do it again."

It is a measure of his isolation that his disciplinary hearings have been among the few times he has had a chance to rub shoulders with the larger legal world. He attends the refresher course each year. But he said the town could not afford to send him to the annual state magistrates' convention, held last year in Niagara Falls, nor could he pay for the trip himself.

Still, he is convinced that he and the other justices across New York are honest people trying to do right. "Economicswise," he added, "you couldn't get the job done any cheaper."

A County at the Edges

The troubles of Mr. Gori and his fellow justices are nothing new. In 1973, the State Commission of Investigation arrived in the Franklin County village of Saranac Lake to examine the work of one justice, a maintenance worker and vacuum-cleaner salesman, whose "inept and mangled handling," it said, had bungled a felony grand larceny case.

What investigators found alarmed them. Money was missing. Records were sloppy. A pile of cash from fines sat in an unlocked drawer. The justice's relationship with the police seemed far too close, and one of his law books was 44 years old.

Astonished, the investigators widened their inquiry to include all the justice courts in the county and then expanded it across New York. Calling for statewide reform, they concluded that "such deficiencies and ineptitude" in the justice courts "simply must not be tolerated."

But little seems to have changed in Franklin County's justice courts since then.

Last November, one longtime village justice, Roy H. Kristoffersen, a salesman, resigned after officials began investigating charges, which he denied, that he "rendered favorable dispositions" for the son of the other village justice — in Saranac Lake, the same place that touched off the investigation 33 years ago.

Another justice, Marie A. Cook, a school-bus driver who is still on the town bench in Chateaugay, not only fixed a speeding ticket at the request of a fellow justice, but she was so oblivious to ethical rules, the commission said last fall, that she made an official record of the fix: "Reduced in the interest of Justice Danny LaClair."

Yet another, the town justice who released a rape suspect on bail as a favor to a friend, tried to explain things to the commission: "Maybe you are not familiar with what goes on in the North Country, but we are all more or less friends up there."

Such cases may only hint at the dimensions of the problem in Franklin's courts. A review for this article of rarely seen appeals files in Franklin County Court showed a disturbing trail of legal blunders and judicial ignorance over the last five years.

One justice seemed not to fully understand that criminal charges must be proved beyond a reasonable doubt, wrote the county court judge, Robert G. Main Jr. Another justice skipped over the matter of the constitutional guarantee of a lawyer. Immediately after a woman charged with fraud said she could not afford an attorney, Judge Main said, the village justice took her guilty plea instead of appointing a lawyer.

Such problems are hardly news to many lawyers who make the rounds of Franklin County's justice courts. Some say they avoid the courts because the justices often have trouble following their arguments.

In a place as poor and remote as Franklin County, the failings of modest courts can loom large. Cases too minor to draw much interest from the rest of the legal system — evictions, misdemeanor charges, disputes between neighbors, driving infractions and applications for bail — come with real consequences for small-town residents who may have little money or access to a lawyer.

Alexander Lesyk, the Franklin County public defender for 15 years until a few months ago, said that while he had some successes for poor clients before local justices, "I don't believe any of them has enough training to handle a trial, to handle constitutional issues, to stand up to and control an attorney on either side when they need to."

But challenging a justice can be bad for business, some lawyers said.

The district attorney, Mr. Champagne, said that when his office hears about justices who stray from the law, it has to be careful. "We're not going to get into a confrontation with a judge we may have to go in front of next week on a very serious preliminary hearing in a murder case," he said.

A Case of Confusion

When Gary Betters got the letter from Justice Gori in March 1999 saying that his claim for back pay had been dismissed, he was very confused. The message was a single paragraph, and garbled at that. Even the date on it was wrong.

But that was only the start of his troubles.

He wrote to Justice Gori, asking for a mistrial. The justice never replied.

Mr. Betters decided to appeal in county court. But he could not persuade any lawyer to take the case; several, he said, told him it would not be in their interest to take on a town justice.

On his own, Mr. Betters filed a complaint with the Commission on Judicial Conduct, and the truth emerged: The commission's investigators discovered that Justice Gori had gone to the Malone village offices before the trial and interviewed the defense's chief witness, the village treasurer, who told him that Mr. Betters was owed nothing.

Justice Gori told the village attorney that he need not show up for the trial because he had already decided to dismiss the case. The attorney was amazed. "A lot of bells and whistles went off," he told the commission.

But when Justice Gori explained himself to the commission in a closed hearing, he said he had never heard of the rule against contacting one side of a case to discuss the evidence. Further, the commission's lawyer argued, a legal motion filed by the village had completely bewildered Justice Gori, even after he made several calls to the state's help line for town justices.

"The whole concept I didn't understand," Justice Gori testified.

It was a damaging admission, but nothing compared with the case made by his own lawyer, John A. Piasecki. He said his client's error-riddled handling of Mr. Betters's suit was an indictment of the system, which put laymen on the bench, gave them little training and left them to interpret the law.

Mr. Piasecki asked whether the state had ever checked Justice Gori's reading comprehension. (It had not.) He even tried to cross-examine the Malone village attorney to show what he argued was the obvious difference between Justice Gori and someone who actually understood the law.

Mr. Piasecki, a Franklin County lawyer himself, urged a "long-overdue correction" for the justice court system, which he said "undermines confidence in the integrity of the judiciary."

The commission was not moved. Justice Gori, it said, had a duty to learn the law. "Town justices wield enormous power in civil and criminal cases," the commission said, "and it is not unreasonable to expect them to know and follow basic statutory procedures."

Yet Justice Gori received the lightest public penalty the commission can issue, an admonition.

As for Mr. Betters, he never found a lawyer to take his appeal. Today, he still feels that his education in Franklin County law cost him a lot more than $1,588.60.

"It broke down my belief in the justice system," he said.

Business as Usual

The judicial career of William Gori began humbly enough.

"Nobody was jumping out of the woodwork wanting this job," said Justice Gori, who raised his hand for the position in 1997 after the sitting justice announced his retirement.

With no opposition, he won the endorsement of the Republicans and then the Democrats in Duane. The Republican chairwoman, Pamela M. LeMieux, said he impressed party leaders as responsible and "very strict."

In the general election, his only opponent was Gary Anderson, a former accountant who ran as the candidate of what he named the Pine Tree Party. "Nobody wants the job," Mr. Anderson said.

Even the campaign was not especially interesting, Justice Gori recalled. "All I said was: 'I'm Bill Gori. I'm running for town justice and I'm only interested in doing a good job for the town.' " He won, 64 to 39.

If the process was not a model of meticulous judicial selection, that fact may carry an extra punch in Duane. The town, as it happens, was named for its founders, descendants of the first federal judge in New York.

When President George Washington selected the judge, James Duane, a prominent lawyer, for the post in 1789, he used the nomination to lay out his aspirations for selecting judges in a democracy. The choice of who would sit on a nation's courts was a matter of "the first magnitude," Washington wrote, and the judiciary was "the pillar on which our political fabric must rest."

Today, that fabric is a little frayed in Franklin County.

Thomas Catillaz, a former mayor of Saranac Lake, said that when political parties there find a nominee, "It's usually, 'Thank God somebody's running,' " he said. "And if you're in there, you're in there for 20 years."

When justices are publicly disciplined, that is often the end of the matter. As Justice Gori recalls it, when he received his second admonition last year, the local newspaper in Malone "put it way in the back."

He faced an election after each ruling, but no opponent. Gary Cring, a retired schoolteacher who has lived in Duane for six years, said he had not heard that Justice Gori had been disciplined. Had that been better known, he said, voters might have been less enthusiastic about re-electing him. "People figure he must be doing a good job," Mr. Cring said.

But Mrs. LeMieux, the Republican chairwoman, said it was not the town's job to police its justice. "If he did something that was that serious, I figure the court system wouldn't have allowed him to remain a justice," she said. "If they didn't throw him out, then who are we to judge?"

And so Justice Gori is working his way through a third four-year term, learning the job as he goes. He does not appear to share his lawyer's disdain for how the justice courts are run.

"I really feel the justice courts are the courts closest to the people," he said, and being a lawyer might interfere with that. "At times, lawyers get hung up in certain things, so that maybe you wouldn't get true justice in certain cases."

But a state police report from last year suggested that in Duane, true justice — and empathy for the people — might be works in progress.

It seems that Brandon L. Lucas, a scrawny 19-year-old from the next county, was trying to pay a ticket he had received in Duane for fishing with the wrong kind of bait. Since the firehouse court was empty, as it often is, Mr. Lucas went down the road to Justice Gori's house.

Soon, Mr. Lucas was in the back of a state trooper's car in handcuffs, and in tears. An angry Justice Gori had berated him and called the police, the young man recalled when a reporter tracked him down. He had evidently not seen the sign on the judge's garage: "If you proceed past this point, you are subject to various trespass rules and regulations."

The district attorney decided not to prosecute. And Mr. Lucas made his own decision about wandering into the jurisdiction of Duane Town Court: Don't.

"I'll never go fishing up there again," he said.

EXHIBIT 3

Los Angeles Times
latimes.com

From the Los Angeles Times

JUICE VS. JUSTICE | A TIMES INVESTIGATION

In Las Vegas, They're Playing With a Stacked Judicial Deck

Some judges routinely rule in cases involving friends, former clients and business associates – and in favor of lawyers who fill their campaign coffers.

By Michael J. Goodman and William C. Rempel
Times Staff Writers

June 8, 2006

LAS VEGAS — When Judge Gene T. Porter last ran for reelection, a group of Las Vegas lawyers sponsored a fundraiser for him at Big Bear in California. Even by Las Vegas standards, it was brazen. Some of the sponsors had cases before him. One case was set for a crucial hearing in four days.

"A Lavish Buffet Dinner will be catered By Big Bear's Premier Restaurant," invitations to Porter's fundraiser said. "There will be Food, Fun, Libations ... a 7:30 p.m. Sunset Cruise on the Big Bear Queen ... a Zoo Tour for the Little Ones." Porter, 49, a Nevada state judge, attended. The evening blossomed into a festival of champagne, lobster and money. Organizers said guests contributed nearly $30,000, dropping much of it into a crystal punch bowl.

Some lawyers considered it protection against ill fortune. Robert D. Vannah, a sponsor of the fundraiser whose firm had the hearing scheduled in Porter's courtroom in four days, would later explain his donation this way: "Giving money to a judge's campaign means you're less likely to get screwed.... A $1,000 contribution isn't going to buy special treatment. It's just a hedge against bad things happening."

Vannah and others in his law firm, along with one of their consultants, made donations worth a total of $13,500, fundraising reports show. It was the fattest combined contribution of the night.

On the other side of the case, counsel for Michael D. Farney, then a resident of Ojai, Calif., whose company was being sued, hadn't chipped in a dime. Worried that bad things might happen to him, the lawyer, Douglas Gardner of Las Vegas, asked Porter to withdraw from the case. "The timing of the campaign gala," Gardner's motion said, "is too close."

Porter refused, protesting he had "no bias or prejudice."

At the hearing four days after the fundraiser, Gardner requested a delay.

Porter refused that too.

The case went to trial, and Porter ordered Farney's company to pay $1.5 million in damages.

The California businessman said his attorneys were appalled. " 'Hometown justice,' " Farney said they called it. "I don't plan to go back for more."

Porter's refusal to withdraw is hardly unusual in Las Vegas courts. This is a juice town, some Las Vegas attorneys openly concede. Financial contributions "get you juice with a judge — an 'in,' " Ian Christopherson, a lawyer in Las Vegas for 18 years, said in an interview. "If you have juice, you get different treatment. This is not a quid pro quo town like, say, Chicago. This town is a juice town."

Las Vegas is one of the fastest-growing metropolitan areas in the United States. Since 1960, census figures show, its population has exploded by 1,246%. But many of its courts have not grown with it, much less grown up. At the heart of the Las Vegas court system are 21 state judges who hear civil and criminal cases, and who can be assigned anywhere in Nevada, but who are called district judges because they work out of courthouses in the judicial districts where they are elected. These state judges often dispense a style of wide-open, frontier justice that veers out of control across ethical, if not legal, boundaries. The consequences reach beyond Nevada, affecting people in other states, especially California.

Some of the effect falls upon visitors from Los Angeles who come here to gamble, flirt with sin and have a good time. More than a quarter — about 29% — of the 38.5 million visits to Las Vegas in 2005 were made by Southern Californians, including many who came here more than once. By that estimate, published by the Las Vegas Convention and Visitors Authority, Southern Californians make more than 11 million visits to Las Vegas every year.

But the effect falls, as well, upon Californians in business. Like Michael Farney of Ojai, who owned Elite Marine, a boat company that served southern Nevada and Lake Mead, an uncounted number of people from Southern California hold financial interests in Las Vegas and its surrounding metropolitan area. Of all businesses that relocate to Nevada, according to the state Commission on Economic Development, at least 36% come from California.

Whether they want to play or do business, all who come to Las Vegas, from Southern California or elsewhere across the nation, expect a fair shake, especially from its courts. Las Vegas is a town, however, where some judges, operating in a new $185-million Clark County courthouse two blocks from casinos, wedding chapels and strip clubs, routinely rule in cases involving friends, former clients and business associates, even in cases touching people to whom they owe money.

In 1990, Porter borrowed $15,000 from attorney George P. Kelesis. While he owed Kelesis the money, Porter ruled in at least six cases involving the law firm of Cook & Kelesis. A recent search found no statement in court records that he told opposing attorneys about the loan. Kelesis says he had left the firm but allowed it to continue using his name to boost its stature. Porter promised to repay the money in 1993, according to county records. But when he retired from the bench in 2003, his disclosure statements show, he still owed Kelesis at least $5,000.

Porter, who has joined a Los Angeles-Las Vegas law firm, declined to be interviewed for this story and would not respond to written questions.

Las Vegas is a town where James C. Mahan, 62, who served initially on the state bench and is now a federal judge, awarded more than $4.8 million in judgments and fees during more than a dozen cases in which a recent search of court records found no statement that he disclosed his ties to those who benefited. Mahan, who sometimes wears a holstered semiautomatic pistol on his right hip while sitting at his desk in the U.S. courthouse, approved court fees for a former business associate who twice served as his judicial campaign treasurer and was instrumental in his federal appointment.

Mahan approved additional fees for his former law partner, who was providing free legal services for the judge's wife and the judge's executive judicial assistant and with whom he still had financial ties, including property ownership and a profit-sharing arrangement.

In an interview, Mahan said the relationships made no difference in his decisions. "I don't care who the attorneys are," he said. He denied seeing any conflict of interest and grew angry at being questioned.

Las Vegas is a town where District Judge Nancy M. Saitta, 55, running unopposed in 2002, raised a political war chest totaling $120,000. She received nearly $70,000 from 140 attorneys and law firms. All 55 lawyers or law firms giving $500 or more had cases assigned to her courtroom or pending before her, according to court and campaign records. Her campaign collected donations at fundraisers hosted by lawyers, also with cases before her.

In one instance, Saitta awarded more than $1 million in fees for a certified public accountant and his attorneys, two of whom held a fundraiser for her while she was ruling on their case.

In an interview, Saitta said, "People who appear in my courtroom are all on equal footing." She said she came up with likely contributors to invite to her fundraisers by finding out who gave readily to other judicial campaigns. Did she take names from her court docket? "Oh," she said, "I would never do that."

Las Vegas is a town where District Judge Sally Loehrer, 59, also running unopposed in 2002, collected about $80,000 in campaign funds. Of 54 attorneys and law firms contributing $500 or more, fundraising reports and court records show that 51 had cases pending before her or assigned to her courtroom. On the eve of one fundraiser, according to the reports, four law firms gave her 12 bottles of wine, a 13-inch TV, two DVD players, a gas grill, dinner for four at Zefferino's restaurant, two theater tickets, two golf lessons and a pool float with two beach towels. All four firms, court records show, had cases pending before her.

In response to written questions, Loehrer said: "I do not keep a list of persons who have contributed in my head, in my desk nor on my computer .... My decisions are based solely upon my understanding of both the facts and the law at the time of the decision and nothing more." She said the wine, beach towels and other items were given away as door prizes.

Loehrer publicly donated $3,300 of her campaign contributions to other candidates, records show. They included candidates for district attorney and attorney general, both of whom try cases before her. Nevada judicial canons say judges shall not "publicly endorse" another candidate.

She responded that her "best analysis" of the canons and a subsequent advisory ruling by Nevada's Standing Committee on Judicial Ethics and Election Practices was that judges may buy tickets to campaign functions regardless of cost. She did not say whether her donations, ranging from $150 to $900, were for tickets.

But the ethics committee noted that any donation of more than $100 had to be reported publicly. Hence, it said, if a ticket cost more than $100, then buying it constituted "a public endorsement" and was "in violation of the Nevada Code of Judicial Conduct."

Las Vegas is a town where District Judge Joseph S. Pavlikowski, 78, officiated on May 4, 1969, at the wedding of Frank "Lefty" Rosenthal, notorious as a front man for the Chicago mob — and then accepted a discounted wedding reception for his own daughter at a casino where Rosenthal was a top boss. Pavlikowski subsequently ruled for Rosenthal in three cases when authorities attempted to bar him from running a casino.

Today, Pavlikowski is a senior judge, commissioned by the Nevada Supreme Court to serve at its pleasure without accountability to the voters.

He declined to be interviewed and would not respond to written questions.

Las Vegas is a town where District Judge Donald M. Mosley, 59, gave unspent campaign funds to a girlfriend. He called it a loan. She said it was a gift. Canon 7 of the state Code of Judicial Conduct said a judge or a candidate for judicial office "should not use ... campaign contributions for purposes unrelated to the campaign." Mosley acknowledged six years ago in a deposition that he provided her with $10,000 of his political money. Mosley said it was restored to his campaign fund, but his girlfriend said she did not repay it.

Mosley's campaign fundraising reports leave the matter unresolved. They show that the money was neither withdrawn nor paid back.

In a written statement, Mosley said he had been subjected to absurd and unsupported allegations by political opponents and by the girlfriend, with whom he eventually fought for custody of their child. "Neither these individuals nor their attacks," he said, "deserve the dignity of a response."

Judicial campaign rules vary from state to state. The Nevada Supreme Court, the top court in the state, whose justices collect money from lawyers and casinos for their own campaigns, allows district judges to accept campaign donations from people who might appear before them. State judicial canons encourage the judges to solicit and accept the donations through campaign committees, but the canons also allow the judges to do it personally.

U.S. and Nevada judicial canons say judges should withdraw from cases where their impartiality might reasonably be questioned. Nevada canons also say judges must avoid even the appearance of impropriety and should reveal on the record anything that they think anyone in court could reasonably consider relevant to disqualification — even if the judges do not think they should withdraw.

Nevada, however, does not require judges to reveal when their donors appear before them.

When lawyers in California and Nevada, along with a number of Nevada district judges, both sitting and retired, were asked about how this affected justice in Las Vegas, many spoke openly about its pernicious effects — particularly about how lawyers and their clients sometimes must pay to play on a level field.

They also told how the effects of judicial corruption seep from Nevada across the state line into California.

Federal and state rules are often ignored, some lawyers said. They cited a good-old-boy culture of cronyism and chumminess that accepted conflicts of interest as "business as usual" and as part of Nevada's maverick history of government-sanctioned prostitution, gambling, drive-through marriages and quickie divorces.

"The common excuse is that this is the way it's always been done — fast and loose — the wild, wild West," said Las Vegas attorney Charles W. Bennion. "But the people making those excuses are the only ones that benefit, and they want it to stay that way."

A common perception among a dozen out-of-state lawyers interviewed about their experiences in Nevada courtrooms is that justice in Las Vegas is just another form of legalized gambling.

"I don't think what goes on in Nevada bears any resemblance to a justice system," said John C. Kirkland, a Santa Monica attorney. He said he had clients who were victimized in Las Vegas courts. "It's an old-boy network. It's not a legal system."

Justice in Nevada, conceded Cal Potter III, a veteran Las Vegas lawyer, is such that "outside law firms just don't trust Nevada courtrooms."

Many blame the campaign funding practices of district judges who have to run for office. "There should be a provision in the law prohibiting judges from directly soliciting a campaign contribution," said state Judge Brent Adams of Reno. "The one standard for a judicial candidate in Nevada today is, 'How much money can you raise?' "

During the most recent Nevada election in which all district judgeships in Las Vegas were on the ballot, 17 incumbents raised more than $1.7 million in campaign funds, collecting much of it from lawyers and casinos with cases pending before them, campaign financial reports and court records show. At least 90% of all contributions for the election, held Nov. 5, 2002, came from lawyers and casinos.

Frequently, a donation was dated within days of when a judge took action in the contributor's case, the records show. Occasionally the contribution was dated the same day.

"It can seem like a shakedown," conceded Jeffrey Sobel, a judge who lost his seat — and that was the point. Sobel collected donations of $1,000 to $5,000 each from 39 attorneys or law firms while their cases were pending in his courtroom, records show. The Nevada Commission on Judicial Discipline investigated him after learning that he had discussed campaign contributions during a conference on a case pending before him. Commission records show Sobel told one attorney that "he was f---ed because he hadn't contributed while others had."

Sobel later said he was joking, but the commission ruled last July that he had violated the state Code of Judicial Conduct, censured him publicly and "permanently barred [him] from serving as an elected or appointed judicial officer in Nevada." The commissioners recommended that "judges should avoid, even during normal campaign activities, soliciting campaign help from attorneys" with cases pending before them, and even from attorneys with "the reasonable likelihood of future litigation" in their courts.

Nonetheless, the commission allowed Sobel to continue to mediate and arbitrate cases, which comprised the majority of his law practice, and it allowed him to continue to be appointed as a special master, who investigates claims in lawsuits and makes recommendations to judges.

Because of campaign contributions from lawyers and casinos appearing before them, said Don Chairez, a former Las Vegas state judge, "Nevada judges find themselves losing or bargaining away their integrity or independence."

Some lawyers, said Steve Morris, a prominent Nevada attorney with 35 years of experience, "are in almost terror of not giving" to judges seeking campaign contributions. His law firm spread about $7,500 in contributions among 11 candidates in the 2002 election, fundraising reports show.

"If it's a close call," Morris said, "asking judges to treat lawyers who contribute money the same as lawyers who don't is asking for the

superhuman. When judges come around and say, 'I need money,' it's a nasty bit of business."

At the very least, some lawyers said, pay-to-play can get them favorable court dates on crowded dockets.

Each state judge in Las Vegas handles more than 2,700 cases a year. A contribution of $500 to $1,000 might not "get you a favorable ruling, [but] it can grease the skids ... get your case called first," said former prosecutor Ulrich Smith, in private practice since 1995.

Bucking this system can be the "kiss of death," some lawyers said. "If you speak out, certain judges take it personally," said Grenville Pridham, a state deputy attorney general for 11 years who is now in private practice in Las Vegas. "You'll pay dearly when you visit their courtroom."

In 2002, Pridham ran for district judge. During his campaign, he denounced fundraising by judges. He accepted no donations.

He lost by more than 160,000 votes.

It got worse, Pridham said. Since the election, he said, regardless of when his cases are scheduled, some judges "call the lawyers around me, even if it's out of order, until I'm the last private attorney left in the courtroom."

Some lawyers are particularly critical of the way judges use leftover campaign money.

Thirteen of the 17 incumbent judges in 2002 ran unopposed, but they collected $967,000 anyway, in both cash and checks, according to fundraising reports. After the election, 11 of the unopposed judges reported they were sitting on a total of about $634,000 in unspent contributions.

"It's scandalous how much unused campaign money is allowed to pile up," said Sobel, the former judge who was defeated. "There's no limit on how much you can keep.... There is no watchdog and no real definition of what exactly is or isn't proper. You can return [unspent money], or save it for a future campaign, or you can give it to a charity, or spend it for some political purpose.

"That leaves a good deal of room for interpretations of all kinds. You could argue that [having] dinner on the Strip gives you a chance to talk to waiters and maitre d's — so, technically, you're campaigning."

Disclosing the size of an unspent bankroll is mandatory, said Dean Heller, Nevada's secretary of state and chief elections officer. But the requirements for specifying what happens to it, he said, are vague. "It's pathetic ... a system designed by politicians to work for them."

Heller said the Legislature gave him only seven people to monitor elections and the campaign reporting of up to 1,000 candidates statewide. Worse, he said, legislators "won't give us authority to audit or even look for reporting irregularities unless we receive a complaint in writing. We get a lot of complaints over the phone, but not many want to put it in writing."

He said the Legislature had rejected his attempts to toughen requirements to disclose unspent contributions. "They want to raise as much money as possible," Heller said, "and tell the public as little as possible."

The public information officer for state courts in Las Vegas, Michael Sommermeyer, advised judges to say nothing in response to questions from The Times. "My recommendation is for all of the judges to refuse to comment," he said in an April 28 memo to Saitta.

Saitta was among three state judges who chose to ignore Sommermeyer's memo. "My job as a public servant has to be open to scrutiny by the public," she said. "I have to be answerable and subject to that scrutiny. I can't hide. I don't have anything to hide."

Case Study

Gene Porter

The lawyers who filled the crystal punch bowl with money at Judge Gene Porter's fundraiser at Big Bear certainly had reason to believe that he would not hesitate to hear their cases.

A Times review of lawsuits that came before Porter during his eight years on the bench shows that 61 presented possible conflicts of interest. In 50 of them, there is no statement in court records that he withdrew or disclosed the possibility of a conflict.

The 61 cases were found in a review of more than 2,000 legal actions involving members of his former law firm as well as his former legal clients, political allies, business associates and creditors.

One example involved Desert Springs Hospital in Las Vegas. Porter's law firm had listed the hospital as one of its "representative clients" in the Martindale-Hubble legal directory the year Porter was appointed to the bench. Porter had been the hospital's attorney of record in at least three lawsuits, court records show.

When six cases naming Desert Springs as the plaintiff or defendant came before Porter as a judge, there is no statement in court records that he revealed his former relationship to the hospital.

In a seventh case, in January 1997, he withdrew, saying, "Because this court represented Desert Springs at the time of this incident ... this court

hereby disqualifies itself."

But Porter did not withdraw from the other cases.

Similarly, in at least 15 cases, Porter did not disclose his longtime friendship with attorney Matthew Callister when he presided over Callister's cases. He and Callister had been friends since high school, and Callister became his close political ally when they served together in the state Assembly. Callister also served as a resident agent for a real estate company formed by Porter's wife.

In a lawsuit involving two business executives from California, Porter appointed Callister as a $200-an-hour receiver, or caretaker of assets. One of the executives, Irenemarie Kennedy of Laguna Niguel, had sued Ashik Patel of Orange, her partner in Seaspan Inc., a hotel management firm incorporated in Nevada.

Porter instructed Callister to run the company during the dispute, replacing another receiver appointed two weeks earlier by another judge. "I wasn't happy," Patel said in an interview. Soon, Patel said, he learned "that the judge and Callister were buddies." Then, Patel said, he made another discovery: "Callister had an association with the other side."

According to court documents submitted by Patel's lawyer and records in the Nevada secretary of state's office, while Callister was serving as receiver in the Seaspan suit, he or his law firm were resident agents for two other corporations and a partnership formed by Kennedy — and he had been doing legal work for Kennedy and her family lawyer.

Patel's lawyer, Samuel B. Benham, asked Porter to allow Callister to withdraw. Court records show that Porter denied the request without comment.

Callister declined to be interviewed and did not respond to written questions.

Kennedy did not return phone calls. Instead a man identifying himself as "Mike Walker, an advisor to the Kennedys," responded, saying: "I don't know if the relationship between Callister and the judge was disclosed at the time, but afterward we did learn they had a relationship. But I met with Callister at least five times, and he was objective and is doing a good job."

In 2002, Porter was reelected to a six-year term. In a campaign fundraising report filed Jan. 10, 2003, he said he still had $32,816 "cash on hand." Porter resigned that September, saying financial considerations forced him from the bench.

As of this week, Secretary of State Heller said, Porter had not met a requirement to file an accounting of his unspent campaign money.

Licensed to practice in Nevada and California, Porter has joined a Las Vegas-Los Angeles law firm and serves as a private judge for Alternative Resolution Centers, a mediation and arbitration firm that provides settlement and fact-finding services in Las Vegas and Los Angeles.

Case Study

Nancy Saitta

The fight was over a company with a subsidiary that made a liposuction machine, which guzzles fat from loins, necks, thighs and waists.

The company was Medical Device Alliance Inc., incorporated in Nevada but whose subsidiary was based in Carpinteria, Calif. Minority shareholders said Donald McGhan, its founder and chief executive officer, should be removed. McGhan fought back. The dispute landed in the courtroom of Judge Nancy M. Saitta.

In June 1999, she appointed George C. Swarts, a certified public accountant, as a receiver — someone to run the company while it was embroiled in the dispute.

Within six months, McGhan and a second, separate group of stockholders filed complaints that Swarts' decisions were biased, lacked expertise and often were unauthorized by Saitta.

Privately, attorneys expressed dismay. "George [Swarts] had inordinate power" with the judge, Alfred E. Augustini, a Los Angeles attorney and legal advisor to McGhan, said in an interview. Swarts "would threaten us, tell us, 'The judge will do anything I ask, whatever I present to her.' George was running the case. We had to yield to George ... comfort George ... agree with George. He was God ... the great pooh-bah ... the big Jabba the Hutt."

What Swarts wanted most of all, Augustini said, was "to keep the meter running." The case was in limbo, he said, and "limbo was paying very well."

Swarts' fees were mounting.

"We tried to get Saitta to fire Swarts," Augustini said, "but that only made things worse."

McGhan tried to disqualify Saitta from the case.

"Judge Saitta has publicly pronounced McGhan guilty three times without hearing the evidence or the testimony of witnesses," said his Nevada attorneys, Steve Morris and Todd L. Bice, in a motion filed in August 2000. "By passing judgment ... without a trial, Judge Saitta can no longer be considered a fair and neutral arbiter.... Under the law, she is required to step aside."

Swarts' attorneys countered that the real target of the attack was Swarts.

The request to remove Saitta went before Lee Gates, the chief judge in Las Vegas at the time.

But Gates had a possible conflict. An attorney from the Frank Ellis law firm, which often represented Swarts, was defending Gates' wife, Yvonne Atkinson Gates, a county commissioner, against a recall, including a lawsuit that court records show was on appeal before the state Supreme Court.

A recent search found no statement in court records that Judge Gates disclosed the relationship or similar relationships in two other cases involving his wife and the Ellis law firm.

Within two weeks, he denied the motion to disqualify Saitta, declaring that she "is not biased or prejudiced concerning any party."

By now, Saitta had come under attack for refusing to let anyone examine paperwork supporting the first bill submitted by Swarts and his lawyers: $524,680 in fees from June 29, 1999, to May 30, 2000.

"Unconscionable ... exorbitant ... outrageously excessive," said lawyers for McGhan and one of the stockholder groups. Attorney Matthew Callister, who represented a second group of stockholders, said in a motion that if Saitta did not deny Swarts' fee or require him to account for its size, then "a great injustice will occur in this case."

Nonetheless, Saitta approved Swarts' request for $524,680, as well as a second request, this one for fees totaling $662,411 for him and his attorneys covering June 2000 through September 2001, court records show.

Attorney Daniel J. McAuliffe, representing McGhan and other defendants, complained in a motion that Swarts had filed the second request 13 months late, "in violation of this court's order."

In yet another motion, Swarts asked that fees be doubled for his attorneys through 2001 and requested 18% interest on unpaid fees since his appointment in 1999.

McGhan's attorneys protested that Swarts' requests "provide for the looting of [the company] to line the pockets of various and numerous counsel — all with no accountability." The request for 18% interest, they said, was "astonishing.... Even Visa and MasterCard charge less."

Nonetheless, Saitta approved both of those requests as well.

In 2002, according to a report McGhan entered into court records, she approved $588,000 for Swarts and $630,000 for his lawyers.

When she was asked about the fees during her interview, Saitta said: "I handle 2,400 cases a year. You're asking me for details on one case. I don't have time to go back and look up every case."

Neither Swarts nor Judge Gates responded to written questions.

In 2002, an election year, Saitta announced that she would seek another term on the bench. Nevada judges seeking reelection historically try to scare off potential opponents by raising large war chests quickly. By March, however, Saitta had raised less than $5,000, campaign records show.

She got help from J. Randall Jones, one of Swarts' attorneys in the ongoing Medical Device Alliance case.

With major decisions in the case still pending, Jones, of Harrison, Kemp & Jones, held a fundraiser for her. The fundraiser was set for May 2 at Jones' home in Las Vegas. Invitations said, "Minimum Suggested Contribution: $500." A cohost was Mark James, an attorney for Medical Device Alliance shareholders. James had played a key role in persuading Saitta to appoint Swarts.

In the 60 days leading up to the fundraiser, Jones, as Swarts' lawyer and a Saitta defender against the accusations of bias, appeared before her at least four times and received favorable rulings, which included her approval of a hotly contested $4-million "good faith settlement" sought by Jones' and James' clients against Wedbush Morgan Securities, based in Los Angeles.

During the fundraiser, Saitta personally greeted about two dozen contributors. Court and campaign records as well as interviews show that at least 18 of the contributors were lawyers with one or more cases pending before her at the time.

The event collected about $20,000 on her behalf.

At election time, she ran unopposed.

Jones and James were asked in separate telephone interviews why they held the fundraiser.

"I think it is incumbent upon attorneys to support good candidates for the bench and retain qualified judges," James said. He added, "That's all I have to say."

Jones said, "I have nothing to say to you." He hung up.

In her interview, Saitta said Jones "asked if he could do the party." Attorneys attended from both sides of the Medical Device Alliance case, she said. "As a candidate, you just show up. You meet with the people. You shake their hands. There's a bowl for the checks."

She said her campaigns do not accept cash. If anyone tries to hand her a check personally, she said, an aide standing beside her takes it instead. "I don't want anything to do with the money."

Saitta and Swarts served as judge and receiver in the case until Medical Device Alliance was sold in January 2004 for $60 million and all claims were settled, court records show.

When Swarts and his lawyers originally persuaded Saitta to name him the receiver, they dismissed predictions that the "costs of Mr. Swarts' appointment would be in excess of $1 million." Such claims, they said, were "hyper-alarmist arguments" and were "grossly over-exaggerated."

In fact, the cost of Swarts' receivership topped $1 million within its first three years, court records show.

Case Study

Donald Mosley

Donald Mosley, the judge who turned over $10,000 of his unspent campaign money to his girlfriend, testified in 1999, nine years after he did it, that it was "the only cash I had available at the time."

He said he did not seek any legal opinions about the legality of what he did.

"I don't know that it's a direct violation to borrow against [campaign funds] on occasion and return the money plus interest," Mosley said during a deposition in an unrelated defamation suit and counterclaim. "I'm not too concerned about that as an infraction of ethics."

Mosley said he gave the money to Terry Figliuzzi (who later changed her name to Mosley). "The situation was that it was early in December and her parents were coming out from Minnesota to visit us ... [and] she wanted to buy Christmas gifts and show her parents a good time."

Mosley said he loaned his girlfriend the money because she expected to win a lawsuit over an unpaid real estate commission of more than $600,000. "It was thought at the time that it was just a matter of several weeks or a month or so and she would have this enormous judgment and so the money would be available."

Eventually, the judge said, the $10,000 was restored to his campaign fund when he received $20,000 from a claim against the judgment.

In an interview, Terry Mosley disputed the judge's version, saying that she had regarded the $10,000 as a gift — "Christmas money. He brought it home in cash and tossed it on the table. It wasn't a loan. I never signed anything."

She said the $20,000 was unrelated to the gift. "I never paid Don back for that — not to this day."

Judge Mosley's campaign funding reports do not resolve the conflicting versions. His 1990 reports say he raised $56,811 and spent $27,573 — leaving $29,238 unspent, but the reports show no $10,000 withdrawal or loan.

The reports he filed in 1996, before his next campaign — one year after Terry Mosley won her $606,877 judgment — reflect no loan repayment.

In 1990, the year Mosley said he withdrew the money from his campaign fund, Canon 7 of the Nevada Code of Judicial Conduct held that a judge or candidate for judicial office "should not use ... campaign contributions for purposes unrelated to the campaign."

Today, the question is covered by Canon 5, which says judicial candidates "shall not use or permit the use of campaign contributions for the private benefit of the candidate or others."

Since 1991, Nevada state law has banned personal use of campaign donations by any state or local candidate. In its most recent formulation, Nevada Revised Statute 294A.160 states: "It is unlawful for a candidate to spend money received as a campaign contribution for his personal use."

Apart from what Mosley did with his campaign money, his girlfriend's real estate lawsuit entangled him in a conflict from which he did not withdraw.

To provide her with a $100,000 security bond for her suit, Mosley put up his house as collateral — giving him a direct stake in the outcome of her case. He arranged for his girlfriend to hire attorney Jason G. Landess, who was appearing before him in another case. While Landess represented Mosley's girlfriend, court records show the judge made several rulings favoring Landess' other client.

The opposing attorney in that case, Richard McKnight, said in an interview that he was never informed about Mosley's stake in Landess' case on Terry Mosley's behalf. "I kept getting my brains beat out in Mosley's court," he said. "It felt sometimes like Mosley and Landess were teaming up

against me."

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Goodman's e-mail address is mj.good@yahoo.com; Rempel's is william.rempel@latimes.com

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Times researcher Nona Yates contributed to this report.

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About This Series

Three articles examining the Las Vegas judiciary:

***Today**: Justice crippled by conflicts.*

***Friday**: A judge and his friends.*

***Saturday**: Special rules for senior judges.*

EXHIBIT 4

http://www.latimes.com/news/nationworld/nation/la-na-vegas9jun09,0,1283510.story?coll=la-home-headlines
From the Los Angeles Times

Juice vs. Justice: Second of Three Parts

For This Judge and His Friends, One Good Turn Led to Another

James Mahan got his jobs on the state and federal benches through the connections of old pal George Swarts. That help has not gone unrewarded.

By Michael J. Goodman and William C. Rempel
Times Staff Writers

10:54 PM PDT, June 8, 2006

LAS VEGAS — Without help from a friend, James Mahan might never have become a Las Vegas state judge. Certainly he wouldn't have gotten one of the top judicial jobs in town: a lifetime appointment to the federal bench.

Then again, without Mahan, his friend George Swarts would never have gotten to run an Internet porn business, a hotel-casino hair salon or a Southern California software company. Indeed, the careers of Judge James C. Mahan, 62, and his friend George C. Swarts, also 62, whom he appointed again and again as a receiver to manage troubled businesses, might be the ultimate example of how juice replaces justice in Las Vegas courtrooms.

In this town, people speak reverently of having juice, or an "in," and Mahan — bearded, likable but sometimes caustic — has made it a striking feature in his courtroom. First as a state judge and now as a federal judge, he has ruled in more than a dozen cases that resulted in more than $4.8 million in judgments and fees. A recent search found no statement in court records that he disclosed his relationships with those who have benefited from those decisions.

On the state bench for three years, and since his appointment as a U.S. District Court judge four years ago by President Bush, Mahan has approved many of these fees for Swarts, who had served as his judicial campaign treasurer and whose political connections got him appointed. Mahan approved additional fees for Frank A. Ellis III, 51, a former law partner with whom the judge still owned property and participated in a profit-sharing plan.

Mahan, like a number of Las Vegas judges, has taken on cases despite state and federal prohibitions against such apparent conflicts. Some Las Vegas judges have ruled in cases involving their friends, even those to whom they owe money. The practice harms visitors and business people alike, especially Californians, who come here in large numbers to work and play. They fall victim to an untamed style of justice, blatantly tangled in clashing local interests.

Las Vegas is a town of instant millionaires, 60-second weddings, six-week divorces and a sly wink at conflicts of interest, to say nothing of the abuses that go with them. Some California lawyers view Las Vegas justice as just another crapshoot. When they are pressed about it, some Nevada lawyers openly condemn the system. The excuse, says Las Vegas attorney Charles W. Bennion, "is that this is the way it's always been done — fast and loose."

Even in Las Vegas, however, Judge James Cameron Mahan stands out.

When owners fight over a business, judges often appoint someone independent as either a special master, to investigate the dispute, or as a receiver, to run the business until the differences are settled.

On 13 occasions in state and federal court, Mahan has installed Swarts, a large man in a business suit who tells people how to spell his name — "think of 'wart' with an 's' on each end" — or his son, Curtis, 41, taller and more casually dressed, at up to $250 an hour, to be a special master or receiver in cases that come before him.

Mahan has then given his approval when George Swarts hired Ellis, a large man who sometimes wears a beard, or his firm, at up to $250 an hour, to represent Swarts in nine of these cases. During three of those cases, court records show, Ellis was providing free legal services for Mahan's family and his executive assistant. In all, Mahan ordered plaintiffs and defendants to pay Swarts and Ellis more than $700,000, the records show.

U.S. and Nevada judicial canons say judges should withdraw from cases where their impartiality might reasonably be questioned. Nevada canons also say: "A judge should disclose on the record information that the judge believes the parties [in a case] or their lawyers might reasonably consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

A recent search of court records in the 13 cases involving Swarts or Ellis, as well as interviews with litigants and their attorneys, found no disclosure of his relationship with either of the two men. Complaints of excessive fees and inaction occasionally united opposing sides to implore Mahan to remove Swarts. In case after case, he refused.

Mahan's judicial power and soaring reputation silenced many of those who suspected or knew of his undisclosed ties, according to lawyers. He was southern Nevada's top-rated state judge in 2000 and 2002 in a biennial survey of attorneys by the state's largest newspaper, the Las Vegas Review-Journal.

In an interview with The Times, Mahan acknowledged that he routinely did not disclose personal relationships. He dismissed them as insignificant and bristled at being questioned.

Face flushed and jabbing a forefinger in anger, Mahan said he appointed receivers in lawsuits based upon their ability and experience. He said he had named Swarts as a receiver for those two reasons and not because of any favoritism.

Mahan also said he had never influenced Swarts to choose Ellis to represent him as receiver's counsel.

"I don't see any conflict of interest," Mahan said.

At one point during the interview, in his chambers at the Las Vegas federal courthouse, Mahan moved in his chair and a holstered semiautomatic pistol became visible on his right hip. In written questions submitted for this story, Mahan was asked about the pistol. He did not respond.

In a separate interview, Swarts said his appointments from Mahan were proper. "I don't think that is a problem," he said. "In fact, if you were going to put someone in a position of responsibility, why wouldn't you put in someone you know, someone you trust ... somebody you knew had integrity?"

When he was asked if Mahan was favoring him with lucrative court assignments, Swarts replied: "Me and Judge Mahan? That's amazing. That's crazy! That's the craziest thing I've ever heard.... Judge Mahan's only appointed me two or three times." Told that Mahan had in fact appointed him in a dozen or more cases, Swarts replied: "No way! No way! I know what you guys are going to do. You're just trying to make us look bad. I don't see any reason to talk to you.... Judge Mahan? He's a fine person. I can't believe you're looking at him."

Ellis was given written questions about his relationship with Mahan and cases in Mahan's court. He did not respond.

One Las Vegas attorney willing to speak out about Mahan, P. Sterling Kerr, who represented two clients in a case before him, said the judge appointed Swarts simply "to give his friends some business."

Kerr called it "a travesty of justice."

Chapter 1

The Lee Case

Mahan has been dismissive of conflicts from the start.

He came to Las Vegas as a lawyer in 1973 and went to work for John Peter Lee, a veteran Nevada attorney. Seven years later, Lee hired Frank A. Ellis III. Two years after that, Mahan and Ellis set out on their own.

Within six months, Mahan sued Lee, claiming that Lee had stiffed him on a profit-sharing bonus. Lee sued back, claiming that Mahan took office furniture, including a desk, and left behind an interest-free IOU, payable only when he got his bonus.

With Ellis representing him, Mahan pursued the matter to the Nevada Supreme Court. It ruled in Lee's favor and ordered Mahan to pay for the furniture — desk and all. "I was surprised at [Mahan's] deep-seated resentment," says attorney Richard McKnight, who had spent five years with him at Lee's firm.

Seventeen years later, when Mahan became a state judge in Las Vegas, Lee asked that he disqualify himself "from all of our firm's [cases] due to past problems between you and the firm ... so we may protect our clients."

Court records show Mahan wrote back: "I have instructed court administration to recuse me from all of your cases."

Mahan did disqualify himself a few months later during a case in which Lee was an attorney, court records show. But in another case seven months later, Mahan refused to withdraw when Lee and his son James, also an attorney, appeared in his courtroom as co-counsel, according to court records and interviews.

The Lees were representing a woman in a palimony suit over a $35-million estate.

A jury ruled against the Lees' client. The Lees asked Mahan to order a new trial, saying, among other things, that he had wrongly instructed the jurors. Court records show that Mahan denied the request.

"It was improper," John Peter Lee said in an interview. "I still feel that way."

When he was asked why he did not withdraw, Mahan said in an interview: "I decided I was going to hear that case. Judges are supposed to hear cases."

Asked about the desk and other furniture he took from Lee's law firm, Mahan shrugged, smiled and patted an unspectacular but ample wooden desk in front of him.

"This is the desk," he said.

Chapter 2

Swarts and Rogich

Many of Mahan's undisclosed relationships were with Swarts, a certified public accountant who grew up in Las Vegas.

His business relationship with Mahan began as early as 1988, when the law firm of Mahan & Ellis formed the first of at least 12 companies or joint ventures for Swarts, several in partnership with Frank Ellis' father, according to Nevada secretary of state records. Often either Mahan or the younger Ellis — or both — served as resident agents or directors.

One such project drew Swarts and the elder Ellis into a lawsuit against investors in a development deal. Court records show that Ellis and Swarts were represented by Mahan and another attorney.

During the 1990s, Mahan expanded his ties with Swarts.

A booming Nevada economy gave him the opportunity. The boom attracted entrepreneurial opportunists with more brass than bankroll. Business disputes and bankruptcies began choking the Nevada courts. In some cases, judges appointed receivers to protect investors, preserve assets and manage troubled businesses while the conflicts dragged on.

Like special masters, receivers are independent, neutral officers of the court, answerable only to the judges who appoint them and typically give them absolute control over the businesses in dispute. Receiverships are easily abused. Historically, state and federal courts appoint receivers only as

a last resort.

In contrast to California's rules, Nevada's requirements for receivers are loose. In both states, receivers are governed by court orders. In Nevada, lawyers write the orders and judges sign them, sometimes changing them as they see fit. But in Los Angeles County, for instance, judges begin with standardized orders and use or rewrite them. Steve Morris, a prominent Las Vegas trial lawyer with 35 years of legal experience in Nevada, said, "Rules for receivers here are short, ambiguous and elastic."

By the mid-1990s, Swarts had become a receiver in both state and federal courts. He brought in his son, Curtis, also a CPA. In 1996, the law firm of Mahan & Ellis incorporated them as Swarts & Swarts.

With increasing frequency, Swarts asked judges to let him hire his own counsel at the expense of the parties in dispute. Most often, he chose Mahan & Ellis.

In 1998, Mahan decided to become a state judge.

His decision put him in Swarts' debt for two favors. In Nevada, state judges are elected. Mahan ran for a judgeship in Las Vegas, and as the first favor, Swarts, seasoned in local politics, agreed to be his campaign treasurer.

Mahan lost the election.

"I decided not to stop," he said in an interview. Two state judges from Las Vegas had won seats on the Nevada Supreme Court, creating a pair of vacancies. Newly elected Gov. Kenny Guinn, a Republican, would fill them after his inauguration in January 1999. "I began 'running for appointment,' " Mahan said.

In this quest, Mahan needed only one vote — that of Nevada power broker Sig Rogich, a Republican fundraiser and media specialist who had been a consultant to Presidents Reagan and George H.W. Bush. It was Rogich who was responsible for the elder Bush's TV ad showing Democratic opponent Michael S. Dukakis perched on a tank with a helmet dwarfing his head.

More important to Mahan, Rogich had masterminded Guinn's gubernatorial election. Guinn had never run for public office.

Rogich was part of old Las Vegas. By contrast, Mahan was a newcomer, but he knew an insider: Swarts. He and Rogich had been friends since grade school.

Indeed, while Swarts had been Mahan's campaign treasurer, Rogich had entrusted him with keeping the books for Guinn's $6-million campaign as well. Records show that Swarts donated his time.

Now, in the second of the two favors, Swarts spoke to Rogich on Mahan's behalf.

"I put [Mahan's] name in with Sig," Swarts said in an interview. "And why did I do that? Because I believe Jim Mahan is one of the finest people I have ever known.... I'd put his name in again."

Mahan was summoned to Rogich's office. "He wanted to meet me," Mahan said in an interview. After the meeting, said a participant who requested anonymity, Rogich promised to "go to the governor." It worked.

On Feb. 22, 1999, during his second month in office, Guinn appointed Mahan to the bench in the state's 8th Judicial District in Las Vegas.

In an interview, Rogich refused to discuss the matter publicly.

Seventeen days after his appointment, Mahan was assigned to decide the appeal of a lawsuit that Rogich won in Justice Court against Phillip Crenshaw, a Las Vegas store owner, over a damaged stereo.

Despite the canons demanding that judges disqualify themselves when their impartiality might reasonably be questioned, Mahan sat in judgment on the appeal.

He reduced Rogich's $3,449 award by $90, but decided in his favor.

R. Clay Hendrix, the attorney for Crenshaw, said he was unaware of Mahan's connection to Rogich until after the case ended, when he received an invitation from Rogich to a Mahan fundraiser. Hendrix was asked how he felt when he found out about Mahan's ties to Rogich. He shrugged and looked away.

This was, after all, Las Vegas.

Mahan was given written questions about this and other cases in this story. He did not respond.

Chapter 3

Elkind-Wilson Case

When Mahan became a state judge, he left Mahan & Ellis. But the law firm did not exactly leave him. He remained a part owner and landlord of the law firm property and continued to draw interest from the Mahan & Ellis profit-sharing plan, according to land records and financial disclosures required of state and federal judges.

The disclosures show that he received income from the law office building until June 2001 and from the profit-sharing plan until mid-December 2002, when his share of the proceeds was rolled over into an IRA.

Meanwhile, the financial fortunes of his former law firm were tied in part to the fortunes of one of its most active clients — George Swarts. On the eve of Mahan's appointment to the bench, court records show, the law firm represented Swarts in three receiverships involving combined legal fees of about $150,000.

During the first weeks of his judgeship, Mahan acknowledged a conflict if he were to preside over a case involving Ellis, court records show. On March 26, 1999, he disqualified himself from an Ellis case "to avoid the appearance of impropriety and implied bias" because Ellis was his former law partner.

But 2 1/2 weeks later, in his second month as a judge, Mahan recommended and then appointed Swarts as a $200-an-hour caretaker in a business dispute — and then approved Ellis as Swarts' attorney, according to court records.

The case involved Stuart Matthews Wilson, a hairstylist who finally struck gold: The Desert Inn hotel-casino on the Las Vegas Strip had selected him to take over its exclusive four-star spa.

The Desert Inn wanted him to expand. He didn't have the money, so he took on a partner, Abbott Elkind, a contractor and client who chipped in about $400,000 for 51% ownership.

Right away, they fought. Soon they sued each other.

In an interview, Wilson recalled their first hearing: "We get to the courtroom and this guy, George Swarts, is already there, waiting. Out of the blue, Judge Mahan has this guy come in as a receiver to take over our beauty salon."

There was a glitch. Wilson's attorney, James Lee, said appointment of a receiver would violate the salon's lease with the hotel-casino. So Mahan decided to call Swarts a special master.

Lee would later write into the court record that, "in fact, Swarts was appointed to be a receiver ... [and] to act as a receiver in every sense of the word."

At the start, according to court minutes, Mahan promised Wilson and Elkind that they would "be included in [Swarts'] business decisions." Within a month, however, Robert Goldstein, Elkind's lawyer, said in a court filing that they were no closer to a buyout — and that Swarts, in effect, had frozen Elkind out of the business.

In response, Mahan wrote that Swarts "shall run the salon business as he sees fit."

That August, court records show, Ellis billed $4,694 for three months, and Swarts presented a three-month bill for $95,928. "My lawyer and I looked at each other in disbelief," Wilson recalled. "Swarts was charging $30,000 a month for basically having somebody pick up the salon's receipts each night."

Both sides filed motions pleading with Mahan to remove Swarts and sell the business before there was nothing left. They said a bookkeeper or payroll service could do for $1,000 a month what Swarts was doing for 30 times that amount.

But Mahan refused to remove him.

In March, a year after Mahan appointed Swarts, Wilson filed for bankruptcy in federal court. "Swarts and Judge Mahan ... destroyed everything I built up in this town for 20 years," Wilson said. "Nobody — lawyers, anybody — wanted to go up against Judge Mahan or Swarts.

"Anything Swarts wanted from the judge, Swarts got."

The Desert Inn closed in August 2000. Elkind, 66, died in January 2002. Wilson now works at a beauty salon in another hotel on the Strip.

When asked about the propriety of appointing his friend Swarts as a special master, Mahan responded, "I appoint receivers based on their backgrounds and the job at hand." Citing another case, he added, "I know George [Swarts] has done securities work before, so I picked him for a securities case."

Mahan said Swarts was just one of several receivers he had used. He named two others. "I just want someone who is competent. I knew [Swarts] was competent. That's why I appointed him."

When asked about the propriety of approving Ellis, his former law partner, to represent Swarts, Mahan responded angrily: "It's up to the receiver to pick his own attorney. I never select them. Receivers select their own attorney. I've never imposed an attorney on any receiver. I don't care who the attorneys are."

Regarding his financial interests with Ellis, Mahan said he made no profit from the income listed on his financial disclosure report as rent from the Ellis office building, because it equaled his share of the mortgage payment. He noted that he sold his interest in the building to Ellis in June 2001.

By then, however, Mahan had been on the bench for two years and had involved Swarts and Ellis in at least seven cases and approved their fees.

As for the Mahan & Ellis profit-sharing plan, Mahan continued to receive interest from it for 18 months after selling his property ownership, his financial reports show — and during that period, court records reveal, Mahan appointed Swarts as a receiver and approved fees for Ellis' law firm as Swarts' counsel in at least five additional cases.

Swarts, in an interview, said there had never been anything improper about his court appointments from Mahan or any other judge. "I don't hobnob with judges.... I don't solicit cases. But when a judge calls, I respond."

Swarts was given written questions about the details of this and other cases in this story. He did not respond.

Chapter 4

The Topless Case

Three people from Detroit wanted to open a topless bar in Las Vegas.

Ronald Sweatt, his wife, Lydia, and investor Robert Katzman formed a 50-50 partnership, called Motor City III. In 1997, they bought an empty lounge near the Strip and began turning it into a cabaret with bare-breasted dancers. Their investment totaled nearly $1 million.

Felony tax evasion convictions ended the Sweatts' chances for licensing in Nevada. So they put the lounge up for sale.

Katzman sold his interest to Ed Gardocki, also of Michigan. The Sweatts accused Katzman and Gardocki of dealing in secret and sued them in Michigan.

They, in turn, sued the Sweatts in Las Vegas.

The case was assigned to Mahan.

He appointed George Swarts as receiver. Mahan said, however, that Swarts' son, Curtis, would handle the matter because he would bill at a lower rate. "No one loses if a receiver is appointed," Mahan said, according to court minutes. Both sides "will be looking at a pile of money, not a piece of property."

Once again, Mahan had appointed his former law client and campaign treasurer, who had helped him gain his judicial appointment.

Swarts hired the law firm of Alverson, Taylor, Mortensen, Nelson & Sanders to represent him. Two and a half years passed, and the topless lounge still was not sold. Moreover, according to court records, the tab for Swarts and his attorneys had climbed to more than $100,000.

Both sides tried to get rid of Swarts. Mahan refused.

On one side: Attorney P. Sterling Kerr, who represented the Sweatts, said in court documents that the fee for Swarts and his attorneys "shocks the conscience" because their only job was selling an empty building.

"Those guys raped my client," Kerr said in an interview. "Mahan was looking for an excuse to give his friends some business."

On the other side: Katzman and Gardocki said Swarts and his attorneys had been paid out of partnership funds without court approval and had failed to pay county taxes on the lounge "to the point where the property itself is in jeopardy."

A month later, Swarts reported that he had paid the taxes.

Attorney Peter Christiansen, who represented Katzman and Gardocki, reminded Mahan that he had promised that Swarts' son, Curtis, would handle the receivership and charge less. Instead, Christiansen said, "George Swarts did the overwhelming majority of the work."

Swarts and his lawyers have "treated this case as a cash cow," Christiansen said. If attorneys on both sides combined and quadrupled their fees, he said, they wouldn't approach what Swarts and his attorneys were charging.

Some charges, Christiansen said, were for duplicate services, services not rendered and services negligently rendered.

Records show that George Swarts billed $200 an hour.

A review of resumes and contemporaneous cases shows that four other Nevada receivers charged $150 to $175 an hour. A year earlier, court records show, Swarts had charged $150 an hour.

Swarts and his attorneys responded that attacks against them were laced with distortions, sometimes fabricated, sometimes absurd and often as "appalling as they are incorrect." They accused both sides of opposing their every move and of creating unnecessary, baseless and frivolous litigation.

As for whether Swarts was running the receivership and not his less-expensive son, Swarts said that Mahan had set the same fee for both of them.

By 2005, the topless lounge was still unsold. On July 25, Swarts said his fees had reached $285,000. Michael Hall, an attorney representing Katzman, was asked what his client and others in the case thought about Swarts' fees. He replied, "They thought it was ridiculous."

State Judge Michelle Leavitt, who replaced Mahan when he went on the federal bench, discharged Swarts as the receiver. On July 27, Leavitt signed an order "approving sale" of the property and said Swarts' fee "comes off the top."

The property finally sold for $1.9 million, Hall said. After fees for Swarts and the attorneys, the pile of money promised by Mahan had vanished.

In an interview, Swarts was asked to explain how partners so divided could be so united in their criticism of him.

"Well, Sterling Kerr hates me," he said, referring to the Sweatts' lawyer. "I have a thankless job. You've got to be crazy to do this. It's not possible to do this job and not have someone get mad at you. I've had lawyers come across the table at me.... When I come in, both parties hate each other, and in the end, both parties hate me."

Chapter 5

Adult On-Line Case

Andrea Norman retired from the escort business when she was 26.

In April 2000, she said, she and her then-fiance invested $500,000 in Las Vegas Adult On-Line Productions Inc., a website marketing prepaid cards to anonymously view or buy Internet pornography.

"It was a great idea," she said in an interview at her gated town house near the Strip. It was late morning. She wore a nightgown, an anklet and rings on her left hand and the second toe of her right foot.

Norman and her fiance put their $500,000 investment into a corporate account.

One day, she said, she got a call from the bank. "I just about s---. There was $16,832 left."

Norman sued her two stockholder-managers.

Meanwhile, Mahan ran to keep his seat. Swarts served as his campaign treasurer for the second time. Mahan won without opposition, and in June 2000, midway through the race, Norman's lawsuit went to his court. While Swarts was still his treasurer, Mahan appointed him as the receiver for Adult On-Line.

Norman recalled the first hearing. "George [Swarts] was already there in court. Bam-pow! He was in as receiver. No discovery. No questions. [Mahan] just put in a receiver. It was pre-decided ... pre-set. My mouth hit the floor."

Mahan assured Norman that he saw "potential value here and that [the] asset should be preserved," court minutes show. "Mr. Swarts ... will keep the business running."

Swarts chose the Ellis law firm, where Mahan had been a partner, to represent him, and Mahan approved the appointment. Mahan was still receiving what he described as rent, or "investment income," from the law firm office building, as well as interest from the Mahan & Ellis profit-sharing plan, according to the financial reports he would file from the federal bench.

Three months after the suit was filed, the two stockholder-managers complained to Mahan, saying they feared that Las Vegas Adult On-Line Productions Inc. was "being bled dry." They said Swarts had frozen or emptied their accounts, would not pay creditors, had broken financing promises and would communicate only through attorneys charging up to $250 an hour.

Unless Mahan intervened, they wrote, they would "be headed into bankruptcy."

But Mahan allowed the receivership to continue.

A month later, court records show, Ellis told Mahan at a hearing, "There is little money" left.

Mahan ended the receivership in December, records show, and approved fees of $15,525 for Swarts and $19,293 for the Ellis law firm for the three months of July 3 to Oct. 9.

"In the end, whatever funds were in the account went to pay the receiver," Norman said. "If I ever see [Mahan] on the street, I'm going to spit in his f------ face."

Chapter 6

The NetSol Case

On June 11, 2001, dissident stockholders, escorted by armed guards, took over the offices of NetSol International Inc., a software company in Calabasas.

Although NetSol was based in California, it had been incorporated in Nevada, and its deposed managers sought assistance there. They sued in Las Vegas state court, and the case was assigned to Mahan.

"The judge, right out of the blue, said: 'Maybe we should get a receiver.... I know a guy who is perfect for this,' " John C. Kirkland, a Santa Monica attorney for the dissidents, said in an interview.

Mahan ordered a recess, Kirkland said, and Swarts appeared in the courtroom. "Right away," Kirkland said, local attorneys told him that Mahan and Swarts "were best friends, had barbecues ... were very close.... We were told in no uncertain terms: This is the 'judge's receiver,' and we were going to have to live with him."

Again, Swarts chose the Ellis law firm, where Mahan had been a partner, to represent him in the receivership, court records show.

By now, Mahan had sold his interest in the law firm real estate. But according to his financial disclosure statements, he was still receiving interest from the Mahan & Ellis profit-sharing plan.

Todd L. Bice, a Las Vegas attorney for NetSol management, said in a telephone interview that he had been unaware of any relationship between Mahan and Swarts. "I don't remember that the issue ever came up in court."

A month later, records show, Kirkland, the dissidents' counsel, accused Swarts of devaluing the firm. "What once was a multimillion-dollar company is now a penny stock." Kirkland said NetSol was doomed.

In August 2001, Mahan ended the receivership. He ordered NetSol to pay Swarts and the Ellis law firm $65,000 for less than two months' work.

Although many computer-based companies suffered during the technology bust, NetSol's plunge was dramatic. In March 2000, its stock traded at $75 a share. By October 2002, the stock had fallen to a nickel a share.

This week, it closed at $1.86 a share.

Kirkland scoffed at the Las Vegas justice system. "It's the most corrupt system I've ever seen. They hometown everyone," he said.

Chapter 7

A Federal Judge

By February 2001, the second anniversary of his appointment to the state bench, Mahan's name had surfaced for possible nomination to the federal bench by George W. Bush, the newly elected president.

Sig Rogich had been the finance chairman of Bush's Nevada campaign. When he learned that Bush would nominate two judges in the state, he made three telephone calls on Mahan's behalf, according to a political insider who requested anonymity.

One call was to Sen. John Ensign, the Nevada Republican who would recommend potential appointees to Bush.

"I nominated Judge Mahan," Ensign said, "because of his outstanding record and reputation. Throughout his career, he has demonstrated a careful and deliberative nature, and a commitment to fairness and the proper application of the law."

The second call was to the screening panel for the Senate Judiciary Committee.

The third was to the White House.

Mahan won Ensign's approval, as well as the endorsement of Nevada's veteran Sen. Harry Reid, a Democrat.

"Sen. Reid joined Sen. Ensign in supporting the nomination," said Reid's spokesman, Jim Manley, "because he felt Judge Mahan had the qualifications necessary to serve as a U.S. District Court judge."

Bush nominated Mahan on Sept. 10, 2001, to be one of the five U.S. District Court judges in Las Vegas. The Senate confirmed him without controversy, and he joined the federal bench on Jan. 30, 2002, a lifetime post.

Mahan's confidants, allies and business pals were not far behind. As his executive judicial assistant, he hired Jeri Winter, a former member of his campaign staff who had been his executive assistant when he was a state judge.

Within little more than a month, he approved the hiring of the law firm of his former partner, Ellis, in a federal case while Ellis was representing Winter at no charge in a bankruptcy. Only months before, Ellis had represented Mahan's wife in a family probate, also for free.

The federal case was over E-Rex Inc., developer of the Dragonfly, a portable printer-fax with Internet capability. Dissident shareholders had sued executives, accusing them of mismanagement, according to court records.

Mahan appointed Swarts, this time as a special master, to investigate the accusations, the records show. According to court minutes, Mahan ordered the dissidents to pay Swarts an advance of $5,000 and an overall fee of $250 an hour.

Mahan approved hiring Ellis' law firm to represent Swarts at $210 an hour.

"We had no idea that the federal judge, Judge Mahan, had a relationship to Swarts or his attorney," Ruben F. Sanchez, a Woodland Hills lawyer representing E-Rex, said in an interview. "That was never disclosed."

Sanchez said E-Rex hired Harold Gewerter, a Nevada attorney. Gewerter was asked in a telephone interview if he knew at the time about Mahan's relationships with Swarts and Ellis. He replied: "I heard indirectly that — I have no knowledge of any relationship. Judge Mahan did a fine job."

Mahan awarded Swarts $17,267 and the Ellis law firm $1,582 for work during March, April, May and June, the court records show.

In July 2002, Mahan dismissed the lawsuit.

The dissidents appealed. In January 2004, a three-judge panel of the U.S. 9th Circuit Court of Appeals reversed Mahan's dismissal in part, saying he had erred by denying the shareholders an opportunity to amend their complaint. The appeals court sent the case back to Mahan.

In April 2005, Mahan granted a change of venue to Florida. The case was appealed again. It remains an open case.

Chapter 8

Interstate Mortgage

One month after he appointed Swarts in the E-Rex case, Mahan was assigned a federal lawsuit accusing Interstate Mortgage Group Inc. of Las Vegas and its former owner and president, David Ferradino, of fraud, breach of contract and breach of fiduciary duty, court records show.

Two and a half years earlier, Swarts had been appointed conservator, or custodian, of Interstate Mortgage, the records show, and then had been appointed receiver of the firm, which had been seized by the Nevada Financial Institutions Division, a state agency that regulated mortgage brokers.

The suit was filed by Robert and Ruby Rogers of Phoenix, who demanded the return of $110,000 lost through what they called "fraudulent acts" by Ferradino and his company — plus $5 million to punish them. The suit meant the firm Swarts was managing had become a defendant in Mahan's court, and Swarts was a defense witness.

Mahan had vouched for Swarts a month earlier by appointing him special master in the E-Rex case. Now he was sitting in judgment upon a firm Swarts was managing in a case accusing the company of fraud.

Representing Swarts and Interstate Mortgage in Mahan's courtroom was the Ellis law firm, where Mahan had been a partner and where Ellis had represented Mahan's wife in a probate and was still providing free legal counsel for Mahan's executive assistant in her bankruptcy case.

"We were never told Mahan [had] any connections with Swarts or his attorney," said plaintiff Robert Rogers in a telephone interview.

At the request of Rogers' attorney, Robert LePome, Mahan dismissed Interstate Mortgage as a defendant, records show. LePome did not return phone calls inquiring about the case. The dismissal left Ferradino as the sole defendant. He was ordered to make restitution.

Rogers said he settled with Ferradino in 2003 for $82,000.

Chapter 9

The Bulloch Case

Less than a month after dismissing Interstate Mortgage and its conservator Swarts from the case, records show, Mahan decided a lawsuit in favor of Howard Bulloch, a longtime Las Vegan, and awarded him more than $4 million.

Mahan and Bulloch were former business associates.

In July 1997, Mahan, then a partner in Mahan & Ellis, and Bulloch, a Las Vegas real estate agent, were on a receivership team to sell 89.07 acres in Laughlin, Nev.

At the time, the judge in the case appointed Swarts as receiver. Swarts had hired Mahan as his lawyer and recruited Bulloch to sell the property. Mahan's billings, filed in 1998 court records, show how closely Mahan and Bulloch had worked together.

Jan. 20: "Review letter ... to Howard Bulloch." Jan. 22: "Review letter ... to Bulloch." Jan. 30: "Review proposed flyer from Bulloch. Telephone call with Bulloch: proposed revisions." Feb. 5: "Review proposed purchase and sale agreement from Howard Bulloch; revise and return to Howard." Feb. 10: "Telephone calls with Howard Bulloch." Feb. 12: "Conference telephone call with Howard Bulloch ... incorporate my suggestions and revisions, which I faxed to Howard yesterday. Conference with client; Howard Bulloch." Feb. 13: "Review marketing efforts documentation from Howard Bulloch." Feb. 19: "Telephone call ... Howard Bulloch's office." Feb. 24: "Review information from Howard Bulloch."

That March, the property was auctioned for $1.25 million, Mahan reported to the judge.

Five years later, Bulloch appeared in Mahan's federal courtroom.

He was suing Michael Shustek, a mortgage broker. According to court records, Bulloch contended that Shustek had wrongfully collected a $3.8-million fee on loans to buy land on the edge of Las Vegas.

In March 2003, at the end of a weeklong trial during which Mahan served as judge and jury, he ruled in Bulloch's favor, saying Shustek's fee was excessive and unlawful.

Mahan refunded the fee to Bulloch, plus interest — for a total of $4.12 million.

Although a recent search found no statement in court records that the judge had revealed their prior relationship, Bulloch said in a telephone interview that it was disclosed.

Shustek's attorney, Steve Morris, was asked in an interview if he knew that Mahan had a prior relationship with Bulloch.

"I'm astounded," Morris replied angrily.

Six weeks later, the Nevada Financial Institutions Division, which regulated mortgage brokers, said that Shustek's fee had been lawful and appropriate.

Shustek appealed Mahan's decision. A three-judge panel of the U.S. 9th Circuit Court of Appeals decided in November that Mahan did not have *jurisdiction to hear the case.*

The 9th Circuit ruling is being appealed to the Supreme Court.

Times researcher Nona Yates contributed to this report.

EXHIBIT 5

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re **FREDERIC SANAI** **Lawyer (WSBA No. 32347)**	Public No. 04-00044 **REQUESTS FOR ADMISSION SET NO. 1**

FREDRIC SANAI'S REQUESTS FOR ADMISSIONS PROPOUNDED TO WASHINGTON STATE BAR ASSOCIATION:

Pursuant to ELC 10.11(b) and CR 36, Fredric Sanai propounds the following requests for admission to the Washington State Bar Association and its disciplinary counsel (the "Association").

Defendant shall serve its answers and responses on Fredric Sanai, within thirty (30) days of the service hereof at the following address: 660 Second Street No. 7 Lake Oswego, OR 97034.

FREDRIC SANAI, Attorney at Law
660 Second Street No. 7
Lake Oswego, OR 97034
Telephone (503) 636-7779

1. An impartial tribunal is a fundamental element of a private litigant's right to due process.
2. Fundamental due process requires that every individual serving in a judicial capacity in a proceeding be impartial both in appearance and in fact.
3. A judicial officer is not impartial if he or she has an actual financial interest in common with one litigant but not another.
4. A judicial officer is not impartial if a person with knowledge of the publicly available facts would have reasonable doubts about the impartiality of a judicial officer.
5. Under Washington law, a special master is a judicial officer especially appointed for a particular lawsuit or proceeding.
6. Under Washington law, a referee is a judicial officer especially appointed for a particular lawsuit or proceeding.
7. Under the Washington state constitution, judicial officers other than judges and commissioners may be appointed only in accordance with statutory law.
8. Washington state statutes require that any person appointed as a judicial referee be qualified as a Washington state attorney at law.
9. Washington state statutes require that any person appointed as a judicial referee be sufficiently impartial, in appearance and in fact, that such person could function is a juror in the case in which the person is to be appointed as a referee.

FREDRIC SANAI, Attorney at Law
660 Second Street No. 7
Lake Oswego, OR 97034
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10. It is a violation of a private litigant's fundamental due process right if a person employed by an opposing party serves as a judicial officer in such litigation.

11. It is a violation of a private litigant's fundamental due process right if a person then employed as a paid professional of an opposing party simultaneously serves as a judicial officer in a lawsuit between the private litigant and the opposing party.

12. Any proceeding which violates a litigant's fundamental due process rights is void.

13. Any order which violates a litigant's fundamental due process rights is void.

14. Any transfer of property of a litigant which violates a litigant's fundamental due process rights is void.

15. Philip Maxeiner was a witness in the divorce trial of Viveca Sanai and Sassan Sanai.

16. Philip Maxeiner was at the time of the trial and thereafter the accountant of Sassan Sanai and his medical corporation.

17. Judge Thibodeau appointed Philip Maxeiner as a special master in the divorce trial.

18. The duties and powers which Judge Thibodeau ordered Philip Maxeiner to perform and to have were those of a judicial referee, not a special master.

19. The Washington State Court of Appeal held that Philip Maxeiner was in fact a judicial referee.

FREDRIC SANAI, Attorney at Law
660 Second Street No. 7
Lake Oswego, OR 97034
Telephone (503) 636-7779

20. Fredric Sanai, on behalf of Viveca Sanai, and Viveca Sanai in a pro se capacity, challenged the appointment of Philip Maxeiner as a special master before the Washington State Court of Appeals on the grounds, inter alia, that his appointment was a violation of her fundamental due process rights.

21. Viveca Sanai in a pro se capacity, challenged the appointment of Philip Maxeiner as a judicial referee before the Washington State Court of Appeals on the grounds, inter alia, that his appointment was a violation of her fundamental due process rights.

22. The Washington State Court of Appeals refused to address the argument presented to them that the appointment of Philip Maxeiner by Judge Thibodeau was a violation of Viveca's fundamental due process rights.

23. The Washington State Court of Appeals imposed sanctions and attorneys fees on Viveca Sanai for arguing in her appeal, inter alia, that Philip Maxeiner's appointment was a violation of her fundamental due process rights.

24. The Justices of the Washington State Court of Appeals who were presented with Viveca's challenge to the appointment of Philip Maxeiner have deliberately ignored the argument.

25. The Washington State Court of Appeals punished Viveca by imposing attorneys fees for arguing in her appeal that Philip Maxeiner's appointment was a violation of her due process rights.

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660 Second Street No. 7
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26. Viveca Sanai in a pro se capacity, challenged the appointment of Philip Maxeiner as a special master before the Washington State Supreme Court on the grounds, inter alia, that his appointment was a violation of her fundamental due process rights.

27. The Washington State Supreme Court punished Viveca Sanai for filing a petition for review of the Court of Appeal's validation of Philip Maxeiner's appointment as a judicial referee by imposing fine payable to the Supreme Court.

28. The Washington State Supreme Court punished Viveca Sanai for filing a petition for review of the Court of Appeal's validation of Philip Maxeiner's appointment as a judicial referee by imposing a fine payable to the Supreme Court without notice that the fine was under consideration.

29. The Washington State Supreme Court punished Viveca Sanai for filing a petition for review of the Court of Appeal's validation of Philip Maxeiner's appointment as a judicial referee by imposing fine payable to the Supreme Court without an opportunity to be heard concerning the fine.

30. The Washington State Supreme Court punished Viveca Sanai for filing a petition for review of the Court of Appeal's validation of Philip Maxeiner's appointment as a judicial referee by imposing a fine payable to the Court that violated Viveca Sanai's fundamental due process rights.

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31. Fredric Sanai was engaged by Viveca Sanai to file an appellate challenge of Judge Thibodeau's decision in the divorce proceedings between her and Sassan Sanai.

32. Judge Thibodeau disqualified Fredric Sanai from representing Viveca on the grounds, inter alia, that there was a conflict of interest arising from Fredric's lawsuit against Sassan Sanai.

33. There is in fact and under the law no conflict of interest for an attorney to represent a client against an adversary when the attorney is simultaneously suing the adversary.

34. Fredric Sanai was never identified as a potential witness for the divorce trial.

35. Fredric Sanai was never called as a witness in the divorce trial.

36. Judge Thibodeau disqualified Fredric Sanai from representing Viveca on two grounds: first, that there was a conflict of interest arising from Fredric's lawsuit against Sassan Sanai.

37. Fredric's lawsuit against Sassan Sanai did not as a matter of law constitute a conflict of interest barring him from representing Viveca Sanai.

38. A party in litigation has a right to counsel of his or her choice, subject to application of written rules of conflict of interest.

39. Judge Thibideau's disqualification of Fredric Sanai violated Viveca Sanai's due process rights.

40. Judge Thibideau's disqualification of Fredric Sanai violated Fredric Sanai's due process right by removing him from the case arbitrarily.

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41. Judge Thibodeau stated on the record that the disqualification was without prejudice to seeking appellate review of his decision by Fredric and Viveca.

42. Fredric and Viveca sought timely appellate review of the disqualification decision.

43. The Washington State Court of Appeal dismissed the appeal of the disqualification order as non-appealable.

44. The disqualification order was, in fact, appealable.

45. Commissioner Crooks of the Washingotn State Supreme Court held that Fredric Sanai could not prosecute an appeal of his diqualificaiton in his own name or that of Viveca Sanai.

46. Commissioner Crooks refused to acknowledge that Judge Thibodeau in fact had limited his disqualification order to allow Fredric to appeal the order on behalf of himself and Viveca Sanai.

47. Commissioner Crooks disqualified Fredric Sanai from pursing the appeal of the disqualification order on behalf of Viveca or himself

48. Fredric Sanai never had the opportunity to litigate the merits of his disqualification by an appeal.

49. The true purpose behind the disqualification of Fredric Sanai was to ensure that the Court of Appeal and Washington Supreme Court would never have to address the issue of the violation of Viveca's due process rights by the appointment of Philip Maxeiner as a judicial referee.

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50. The appointment of employees of private parties as judicial referees, special masters and/or receivers in litigation involving such private parties is a common practice by Washington State judges.

51. Fredric Sanai filed notices of lis pendens over relevant property in the divorce litigation on the explicit grounds that Philip Maxeiner's appointment of a special master or judicial referee was improper.

52. The filing of the lis pendends was appropriate because Philip Maxeiner's appointment of a special master or judicial referee was a violation of Viveca Sanai's due process rights.

53. The Court of Appeal refused to acknowledge or address Viveca Sanai's arguments that Philip Maxeiner's appointment as a judicial referee was a violation of Washington State statutory law and the federal and state right of due process.

54. The Washington State Supreme Court refused to acknowledge or address Viveca Sanai's arguments that Philip Maxeiner's appointment as a judicial referee was a violation of Washington State statutory law and the federal and state right of due process.

55. The appointment of employees of private parties as judicial referees in litigation involving such private parties is a common practice by judges in Washington State.

56. The appointment of employees of private parties as judicial referees, special masters and/or receivers in litigation involving

FREDRIC SANAI, Attorney at Law
660 Second Street No. 7
Lake Oswego, OR 97034
Telephone (503) 636-7779

such private parties is a common practice by federal court judges in the states falling within the Ninth Circuit Court of Appeals.

57. It is common practice of Washington State court judges to appoint as judicial referees, special masters and/or receivers in litigation presided over by such judge, persons with whom the judge has entered business and/or investment transactions.

58. It is common practice by federal district court judges in the states falling within the Ninth Circuit Court of Appeal to appoint as judicial referees, special masters and/or receivers in litigation presided over by such judge, persons with whom the judge has entered business and/or investment transactions.

59. If a Washington Statue appellate court would have ruled that in a published decision that Philip Maxeiner's appointment was a violation of Viveca's due process rights, it would have brought into question the past, present or future appointment of any special master, judicial referee, or receiver who was an employee of a party in the relevant litigation.

60. If a federal court would have ruled that in a published decision that Philip Maxeiner's appointment was a violation of Viveca's due process rights, it would have brought into question the past, present or future appointment of any special master, judicial referee, or receiver who was an employee of a party in the relevant litigation.

FREDRIC SANAI, Attorney at Law
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61. If a Washington Statue appellate court would have ruled that in a published decision that Philip Maxeiner's appointment was a violation of Viveca's due process rights, it would have brought into question the past, present or future appointment of any special master, judicial referee, or receiver by a judge who simultaneously involved in a business relationship with such appointee.

62. If a federal court would have ruled that in a published decision that Philip Maxeiner's appointment was a violation of Viveca's due process rights, it would have brought into question the past, present or future appointment of any special master, judicial referee, or receiver by a judge who simultaneously involved in a business relationship with such appointee.

63. On May 15, 2003 Judge Zilly entered a cease and desist order prohibiting the Plaintiffs from filing a notice of lis pendens in respect of the community property in the divorce litigation.

64. At the May 15, 2003 hearing Judge Zilly stated that the order did not apply to anything going on in state court litigation.

65. Judge Zilly never provided any notice that the May 15, 2003 order had been changed or expanded.

66. The United States Supreme Court has held that state court judges may be sued by individuals for violation of such individual's due process rights under the Civil Rights Act of 1871, 42 U.S.C. § 1983.

FREDRIC SANAI, Attorney at Law
660 Second Street No. 7
Lake Oswego, OR 97034
Telephone (503) 636-7779

67. Lawsuits against state court judges under 42 U.S.C. § 1983 are subject to dismissal under *Younger* abstention, unless extraordinary circumstances are present.

68. The United States Supreme Court has held that bias, lack of appearance of fairness, and/or financial interest of a tribunal or judicial officer constitutes extraordinary circumstances negating application of Younger abstention.

69. *Younger* abstention does not apply to lawsuits against judicial officers or tribunals who have or which have a member who has a financial interest in the litigation.

70. *Younger* abstention does not apply to lawsuits against judicial officers or tribunals who have or which have a member who has a financial interest in the litigation.

71. Judge Zilly ignored the extraordinary circumstances exception to *Younger* when he denied the motion for an injunction against Maxeiner under 42 U.S.C. § 1983.

72. The Ninth Circuit Court of Appeals refused to acknowledge or address the extraordinary circumstances exception to *Younger* when it upheld the motion for an injunction against Maxeiner under 42 U.S.C. § 1983.

FREDRIC SANAI, Attorney at Law
660 Second Street No. 7
Lake Oswego, OR 97034
Telephone (503) 636-7779

Respectfully Submitted this ____ day of January, 2007.

Fredric Sanai, WSBA 32347

FREDRIC SANAI, Attorney at Law
660 Second Street No. 7
Lake Oswego, OR 97034
Telephone (503) 636-7779

EXHIBIT 6

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

IN RE:	)	
	)	Public File No. 04#00044
FREDRIC SANAI,	)	
	)	ORDER ON MOTION FOR
Lawyer (WSBA No. 32347).	)	PROTECTIVE ORDER
	)	

THIS MATTER having come before the hearing officer on the Washington State Bar Association's Motion for a Protective Order, quashing certain of Respondent's Requests for Admission, and having considered the documentary presentations, including memorandum and declarations filed by both parties, the Hearing Officer

FINDS:

1. That Respondent's Request for Admissions numbers 1-14, 18, 19, 23, 28, 29, 30, 33, 36-40, 42, 44, 45, 47, 52, 59-62, 66-72 seek legal conclusions and do not require the Washington State Bar Association to respond;

2. That Respondent's Requests for Admissions numbers 20, 21, 26 and 27 are irrelevant to the issues before the Disciplinary Board, and do not require the Washington State Bar Association to respond;

3. That Respondent's Requests for Admissions numbers 22, 24, 25, 34, 46, 48, 49, 53, and 54 request conclusions which contain a subjective component concerning the reason for an action of which the Washington State Bar Association could have no direct personal knowledge and do not require the Washington State Bar Association to respond;

4. That Respondent's Request for Admissions numbers 41, 50, 55-58, 64 and 65 would require the Washington State Bar Association to conduct polls of state and federal court practices, and would be unduly burdensome, or would require the Washington State Bar Association to review voluminous records in order to accurately answer the request, and would also be unduly burdensome, and therefore do not require the Washington State Bar Association to respond;

5. That the presentation of the merits of this action will not be served by requiring the Washington State Bar Association to respond to the above listed admission requests.

Based on the Findings listed above, it is

ORDERED:

That the Washington State Bar Association's Motion for Protective Order quashing Respondent's First Set of and Requests for Admissions as listed above is granted, and the Washington State Bar Association will respond and answer Admission Requests 15-17, 31, 32, 35, 43, 51 and 63.

DATED this 13th day of February, 2007.

Joseph M. Mano, Jr.
Hearing Officer

EXHIBIT 7

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

IN RE:	)	
	)	Public File No. 04#00044
FREDRIC SANAI,	)	
	)	ORDER DENYING RESPONDENT'S
Lawyer (WSBA No. 32347).	)	MOTION FOR ORDER
	)	ALLOWING SUBPOENAS

THIS MATTER having come before the Hearing Officer on the Respondent's Motion for an Order Allowing Subpoenas, and after considering the Respondent's Motion, the Washington State Bar Association's Response, including the Declarations submitted, the Hearing Officer

FINDS:

1. That the only purpose of the subpoenas as set forth by Fredrick Sanai's motion is that "the three judges are being asked to do nothing more than explain their views of the case and to justify their reasoning";
2. That the requested depositions, therefore, seek to uncover the judges' mental processes or bases for certain opinions;
3. That the requested depositions are not reasonably calculated to lead to discovery of admissible evidence.

Based on the above findings and the law as applied to those findings, it is

ORDERED that the Respondent's Motion for Order Allowing Subpoenas is denied.

DATED this 13th day of February, 2007

Joseph M. Mano, Jr.
Hearing Officer

EXHIBIT 8

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

IN RE:	)	
	)	Public File No. 04#00044
FREDRIC SANAI,	)	
	)	ORDER DENYING RESPONDENT'S
Lawyer (WSBA No. 32347).	)	MOTION FOR CYRUS SANAI'S
	)	ADMISSION PRO HAC VICE

THIS MATTER having come before the Hearing Officer on the Respondent's Motion for Association *Pro Hac Vice*, seeking Cyrus Sanai's *pro hac vice* admission, and having considered the Respondent's Motion, the Washington State Bar Association's Response and the Respondent's Reply, including the Declarations of Linda Eide and Cyrus Sanai, as well as the record in this case, the Hearing Officer

FINDS:

1. That in prior Court appearances in the State of California, Cyrus Sanai has been found to have "intentionally altered court documents to show that certain individuals were served on behalf of corporate defendants" and also appeared "to have intended to file and serve the memorandum in a manner and time to prevent the parties from obtaining actual notice in time to challenge it";

2. That in direct contravention of a federal court order, he filed a *lis pendens* notice against certain property. As a result of that action, he was found in contempt of court by the United States District Court for the Western District of Washington, and ordered to pay attorney's fees and costs;

3. That, in addition, Cyrus Sanai was sanctioned by the United States District Court of the Western District of Washington in November 2005, to the extent of $280,000.00 for litigation misconduct;

4. That on March 31, 2006, the Hearing Officer ordered the parties in this case to exchange a preliminary list of witnesses, including addresses and phone numbers by August 4, 2006. On August 23, 2006, or later, Cyrus Sanai, then counsel for Fredrick Sanai, sent a list of witnesses without addresses or phone numbers adding to an apparently earlier filed list an additional nine witnesses, including U.S. Ninth Circuit Judges, and the Chief Justice of the Washington Supreme Court;

5. That on October 2, 2006, this Hearing Officer ordered Cyrus Sanai, then counsel for Fredrick Sanai, to produce exhibits overdue to the Washington State Bar Association under a prior scheduling order by October 9, 2006. Although during the telephonic hearing Cyrus Sanai agreed to provide those exhibits by that date, he failed to do so;

6. That given these findings of the actionable misconduct and the conduct in this case, this Hearing Officer concludes that reasonable assurances of appropriate conduct, including following the rules of practice and procedure, as required by *Hahn v. Boeing Company*, 95 Wn2d 28, 621 P2d 1263 (1980) are not present.

Based on the above findings, it is

ORDERED that Respondent's Motion for Association and Admission of Cyrus Sanai *Pro Hac Vice* is denied.

DATED this 13th day of February, 2007.

Joseph M. Mano, Jr.
Hearing Officer

EXHIBIT 9

FILED

MAR 22 2007

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re FREDRIC SANAI Lawyer (Bar No. 32347.	Public No. 04#00044 ELC 10.13(b) NOTICE TO ATTEND HEARING

TO: Fredric Sanai

Under Rule 10.13(b) of the Rules for Enforcement of Lawyer Conduct (ELC), you must attend the disciplinary hearing set to begin at 9:00 a.m. on April 16, 2007 at the offices of the Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, Washington 98101.

Dated this 22nd day of March, 2007.

Linda B. Eide, Bar No. 10637
Senior Disciplinary Counsel

Certificate of Service

I certify that I caused a copy of the foregoing Notice to Attend Hearing to be mailed to Respondent at 660 2nd St., No. 7, Lake Oswego, Oregon 97034 by first-class mail, postage prepaid, on the 22nd day of March, 2007 with a copy to Hearing Officer Joseph M. Mano, Jr., 20 SW 12th Street, PO Box 1123, Chehalis, Washington, 98532-0160.

Linda B. Eide

WASHINGTON STATE BAR ASSOCIATION
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8207

EXHIBIT 10

The New York Times

October 1, 2006

Campaign Cash Mirrors a High Court's Rulings

By ADAM LIPTAK and JANET ROBERTS

COLUMBUS, Ohio — In the fall of 2004, Terrence O'Donnell, an affable judge with the placid good looks of a small-market news anchor, was running hard to keep his seat on the Ohio Supreme Court. He was also considering two important class-action lawsuits that had been argued many months before.

In the weeks before the election, Justice O'Donnell's campaign accepted thousands of dollars from the political action committees of three companies that were defendants in the suits. Two of the cases dealt with defective cars, and one involved a toxic substance. Weeks after winning his race, Justice O'Donnell joined majorities that handed the three companies significant victories.

Justice O'Donnell's conduct was unexceptional. In one of the cases, every justice in the 4-to-3 majority had taken money from affiliates of the companies. None of the dissenters had done so, but they had accepted contributions from lawyers for the plaintiffs.

Thirty-nine states elect judges, and 30 states are holding elections for seats on their highest courts this year. Spending in these races is skyrocketing, with some judges raising $2 million or more for a single campaign. As the amounts rise, questions about whether money is polluting the independence of the judiciary are being fiercely debated across the nation. And nowhere is the battle for judicial seats more ferocious than in Ohio.

An examination of the Ohio Supreme Court by The New York Times found that its justices routinely sat on cases after receiving campaign contributions from the parties involved or from groups that filed supporting briefs. On average, they voted in favor of contributors 70 percent of the time. Justice O'Donnell voted for his contributors 91 percent of the time, the highest rate of any justice on the court.

In the 12 years that were studied, the justices almost never disqualified themselves from hearing their contributors' cases. In the 215 cases with the most direct potential conflicts of interest, justices recused themselves just 9 times.

Even sitting justices have started to question the current system. "I never felt so much like a hooker down by the bus station in any race I've ever been in as I did in a judicial race," said Justice Paul E. Pfeifer, a Republican member of the Ohio Supreme Court. "Everyone interested in contributing has very specific interests."

"They mean to be buying a vote," Justice Pfeifer added. "Whether they succeed or not, it's hard to say."

Three recent cases, two in Illinois and one in West Virginia, have put the complaints in sharp focus. Elected justices there recently refused to disqualify themselves from hearing suits in which tens or hundreds of millions of dollars were at stake. The defendants were insurance, tobacco and coal companies

whose supporters had spent millions of dollars to help elect the justices.

After a series of big-money judicial contests around the nation, the balance of power in several state high courts has tipped in recent years in favor of corporations and insurance companies.

In the 2002 Ohio judicial election, for example, two candidates won seats that year on the seven-member court after each raised more money than one of the candidates for governor that year.

Corporate Giving Increases

Judges are required by codes of judicial ethics to disqualify themselves whenever their impartiality might reasonably be questioned over financial or other conflicts. Even owning a few shares of stock in a defendant's company or seeing a relative's name on a brief generally requires automatic disqualification.

But there is an exception to this strict rule: campaign contributions. Very few judges in the states that elect the members of their highest court view contributions as a reason for disqualification when those contributors appear before them.

Many judges said contributions were so common that recusal would wreak havoc on the system. The standard in the Ohio Supreme Court, its chief justice, Thomas J. Moyer, said, is to recuse only if "sitting on the case is going to be perceived as just totally unfair."

Duane J. Adams, a plaintiff in one of the class-action suits heard by Justice O'Donnell, concerning defective cars, said he questioned the impartiality of the justices who ruled against him. Mr. Adams had sued DaimlerChrysler under the state's lemon law, and he grew angry when told that the company's political action committee had given money to justices in the majority.

"At the very least, it's a conflict of interest," Mr. Adams said. "These gentlemen, they should be prosecuted for what I consider is taking a bribe." He and the other plaintiffs did not contribute, but their lawyers gave to the campaigns of five of the justices.

Precisely what contributors want or get for their money is unclear. Some contributors say they have no agenda beyond ensuring that able and independent judges are elected. Others surely hope to influence the justices' votes in particular cases.

The middle ground, advanced by groups representing business, labor and plaintiffs' lawyers, is to support justices who hold views similar to their own. "Various interests see voting patterns," Chief Justice Moyer said. The alignment between contributions and votes, he said, is a matter of shared judicial philosophy.

If that is right, contributors are not trying to buy votes in particular cases. But they are trying to buy seats on the court.

And they are succeeding. Not long ago, the Ohio Supreme Court was controlled by liberal justices whose campaigns had been financed in large part by plaintiffs' lawyers and unions. Now that business groups are outspending their adversaries, the court has become dominated by more conservative justices. And the court's decisions are no longer markedly sympathetic to people claiming injuries.

Justice O'Donnell, a Republican, won his seat with the help of big contributions from the insurance, finance and medical industries. He is running for re-election this year, and his opponent, Judge William O'Neill, is making contributions an issue.

"We have to stop selling seats on the Ohio Supreme Court like we sell seats on the New York Stock Exchange," said Judge O'Neill, a Democrat on the 11th District Court of Appeals in Warren, in northeast Ohio. He says he will not accept contributions.

Justice O'Donnell, who has raised more than $3 million since 2000, refused to be interviewed for this article despite more than a half-dozen requests to his campaign, his chambers and the court. In a statement, he said, "Any effort to link judicial campaign contributions received by a judicial campaign committee for major media advertising to case outcomes is misleading and erodes public confidence in the judiciary."

"A judge," the statement said, "may fairly and impartially consider matters despite receipt of the campaign contribution by the campaign committee."

Interest groups play a powerful and generally accepted role in races for legislative and executive positions. But their increasing role in identifying and supporting judicial candidates is at odds with the traditional concept of what judges do.

"The role of the judge and the role of the legislator are completely different," said William K. Weisenberg, an Ohio State Bar Association official. "You want a legislator to vote the way you would vote. When you go into court, you want someone to listen to the facts and decide the case on the facts and the law. We don't want the umpire calling balls and strikes before the game has begun."

Influencing the Bench

Many judges concede that sitting on their contributors' cases creates the perception that their votes can be bought. But in public, at least, most insist the perception is wrong.

"All the surveys I've seen indicate that generally 75 percent of the people believe that contributions influence decisions," said Chief Justice Moyer, a Republican. But when asked if contributions played a role in courts' decisions, he said: "I don't believe they do. I know they don't for me."

That view is not universally held.

"It's pretty hard in big-money races not to take care of your friends," said Richard Neely, a retired chief justice of the West Virginia Supreme Court of Appeals. "It's very hard not to dance with the one who brung you."

Indeed, according to a survey of 2,428 state court judges conducted in 2002 by Justice at Stake, a judicial reform organization, almost half said campaign contributions influenced decisions. And more than half agreed that "judges should be prohibited from presiding over and ruling in cases where one of the sides has given money to their campaign."

The Times study explored the influence of money on judicial decision-making by asking two basic

questions about the Ohio Supreme Court. How often did it hear cases involving major contributors? And how did justices vote in those cases?

The study considered only cases that were both significant and difficult. It excluded procedural decisions, including whether to hear or reconsider a case. And only divided cases — those in which there was at least one dissent — were considered, because those presented the most contentious legal issues. In the 12 years ended this spring, there were about 1,500 such decisions.

The study looked at contributors who gave $1,000 or more in the six years preceding the decision, the term length for justices.

It also considered, for the most part, only the contributors most directly affected by a ruling: the parties themselves and groups that filed supporting briefs urging the court to rule a certain way.

Contributions from lawyers were excluded from the study's main findings. Lawyers are far more likely than other contributors to give to judges across the ideological spectrum, and — because their firms often handle a wide variety of cases — they generally do not have the intensely focused interest in the outcome of a particular case that their clients do. More than 200 times, moreover, justices sat on cases after receiving contributions from lawyers on both sides.

The court's decisions, the study found, were rife with potential conflicts. In more than 200 of the 1,500 cases, at least one justice cast a vote after receiving a significant campaign contribution. On scores of occasions, the justices' campaigns took contributions after a case involving the contributor was argued and before it was decided — just when conflicts are most visible and pointed.

Contributors did well with those whose campaigns they had financed. Of the 10 justices in the Times study, 6 sided with contributors more than 70 percent of the time. Justice O'Donnell, who has been on the court for only three years and has participated in fewer decisions than most of the justices studied, had the highest rate — 91 percent.

Lawyers who gave money were not nearly as successful. Five justices voted for the positions represented by these contributors half of the time, and the average rate was 55 percent. Recusals in cases involving contributors were all but unheard of.

Six of the seven sitting justices — all except Justice O'Donnell — agreed to interviews for this article, and all said contributions had not affected their decisions.

"There is a lot more to the story than the cold numbers suggest," said Justice Maureen O'Connor, a Republican who voted for her contributors 74 percent of the time. Some cases are more significant than others, she said. Similarly, she and other justices criticized the decision to omit from the study the court's terse rulings on whether to hear a case at all. Many of these decisions are routine or trivial, however, and the rulings themselves do not contain sufficient information to be readily categorized.

In his statement, Justice O'Donnell said that "selectively screening a limited number of case decisions results in a skewed outcome." He did not elaborate.

But Justice Pfeifer, who voted for his contributors 69 percent of the time, backed the study's methodology.

"I quite frankly can't think of another way," he said. "You're using the only yardstick that I'd know of that you can use."

Several justices said they found Ohio's money-fueled judicial elections distasteful and troubling. They pointed out, though, that Ohio law has mechanisms to limit contributions and to insulate justices from contributors, including a ban on personal solicitations by the justices. Some said they tried to avoid learning the identities of their many contributors, though they conceded it could sometimes be unavoidable. Justice Evelyn Lundberg Stratton, for instance, said she had attended 50 fund-raisers during her last campaign.

None of the justices interviewed suggested that more frequent recusals from contributors' cases would be a positive step rather than a recipe for havoc. Last year, though, five justices did recuse themselves from a case involving a Republican fund-raiser, Thomas W. Noe. They had taken $23,510 from Mr. Noe and his wife. Appeals court judges filled in for the justices.

"It is not necessary for a judge to recuse himself just because an attorney or party has contributed to his campaign," Chief Justice Moyer said in a statement at the time. "However, this is a high-profile case with political implications and with potential personal consequences for the campaign contributor in question."

Some legal experts say that recusal should be the rule and not the exception. Indeed, in 1999, the American Bar Association revised its Model Code of Judicial Conduct to require judges to disqualify themselves if they received campaign contributions of a certain amount from a party or its lawyer. But the bar association did not name an amount, leaving it to the states should they adopt the code. No state has adopted it.

Unlike campaign contributions, direct gifts to judges, even relatively small ones, almost always require disqualification.

In 2002, for instance, the Ohio Supreme Court reprimanded a lower-court judge for accepting football tickets from Stuart Banks, a lawyer who had appeared before the judge. Yet three of the justices who issued the reprimand had accepted at least $1,000 each in contributions from Mr. Banks in the previous 10 years. Those same justices also sat on several cases in which Mr. Banks appeared before them.

Ruling on a Lemon Law

From the day he leased it in 1996, when it leaked transmission fluid all over the garage, Duane J. Adams's Dodge Caravan was nothing but trouble.

"My wife went to start it at the grocery store, and the battery blew up," Mr. Adams said. "We didn't feel safe in it."

Mr. Adams invoked Ohio's tough lemon law, which calls for a refund for defective cars. DaimlerChrysler took the car back after an arbitration found the car defective but deducted a $6,000 "mileage fee."

Mr. Adams and other Ohio car buyers filed a class-action lawsuit against three car companies that routinely imposed such mileage fees in settlements and arbitrations. Drawing on a 1996 appeals court

decision that banned the fees and the fact that the Ohio Legislature had rejected such fees when it enacted the law, an appeals court allowed the case to go forward in 2003.

In the first week of November 2004, while the case was pending in the Ohio Supreme Court, the political action committee of DaimlerChrysler, a defendant, gave $1,000 each to the election campaigns of Chief Justice Moyer and Justice O'Donnell. Two months earlier, the committee of a second defendant, Ford, gave those same justices $500 apiece. From 2000, when the suit was filed, to 2004, when it was decided, the affiliates of the three companies gave $15,000 to four of the justices on the case.

Still, all four of the justices continued to sit on the case, and all of them were in the majority in the 4-to-3 decision issued on Nov. 10, 2004, just days after the last set of DaimlerChrysler contributions.

The justices ruled that the plaintiffs had voluntarily accepted settlement offers or arbitration awards with the mileage fee deducted. The ban on the fees applied only to lawsuits filed in court and not disputes resolved less formally, the majority said.

The three dissenting justices said the majority's ruling gave the plaintiffs an impossible choice: to pursue a lawsuit that could cost more than the car itself or to accept the reduced sum.

Elaine Lutz, a spokeswoman for DaimlerChrysler, defended the company's actions. "The contributions that companies' PAC's make are driven by the campaign calendar, not the judicial calendar," Ms. Lutz said. Candidates for the court may accept contributions for about a year before an election and four months afterward.

Lawyers for Ford also said it complied with Ohio law. "By definition," said one of the lawyers, John Beisner, "if you have an elective system, the judges are going to go to those with the greatest interest in the system to get their contributions."

Car company lawyers said the contributions were merely an effort to level the field against big-spending plaintiffs' firms. In the lemon-law case, though, the overall contributions were tilted heavily in favor of the companies and their own lawyers.

Mr. Adams and the other named plaintiffs gave no money to the justices. While the case proceeded, their lawyers contributed about $12,000 to five of the seven justices in the case, dividing their money roughly evenly between a justice who voted for them and several who voted against them. The law firms representing the companies gave only to the justices in the majority, for a total of more than $115,000.

That was consistent with national trends. "The current wars are epic battles between businesses and trial lawyers," said Bert Brandenburg, the executive director of Justice at Stake. "Over the past half-decade, business groups are outraising and outspending trial lawyers."

A week after the lemon-law case was decided, the court announced another ruling in favor of a business. This one halted a class action to support the medical monitoring of workers who had been exposed to beryllium, a potentially toxic substance. The vote was 5 to 2. Employees and the political action committee of the parent company of the defendant, Brush Wellman, gave a total of $5,700 to four justices, more than $2,600 of it after the case was argued and before it was decided. All four were in the majority.

Patrick Carpenter, a spokesman for Brush Wellman, said its political action committee "contributes to deserving candidates in the interest of advancing good government" and noted that the workers' lawyers had also given to the justices. The lawyers gave about $20,000 to several justices, though most voted against the workers. Mr. Carpenter also said the company had lost a 2002 decision by a 4-to-3 vote, before the court's conservative wing took over.

Michael Fincher, a 48-year-old roofer who was a plaintiff in the beryllium suit, said the contributions meant he had not received impartial justice. "I don't think it's appropriate, period," Mr. Fincher said.

Screening the Candidates

Business groups have turned picking potential justices into an art.

"They study very carefully the field of potential candidates, really studying their backgrounds and what makes them tick, and picking a person who is liable to be leaning their way," said Justice Pfeifer, who has shown an independent streak in his 14 years on the court. He did not name names.

Justice O'Donnell's campaign materials say he is "rooted in law enforcement" as the son a Cleveland police officer. They also note that he served as a law clerk and taught elementary school students and paralegals. In 20 years on lower courts before his appointment to the Supreme Court in May 2003, he created a long paper trail of conservative decisions. On the Supreme Court, he has helped consolidate its transformation from a court that routinely ruled against corporations and insurance companies to one quite friendly to business interests.

In 2004, running to complete the six-year term to which he had been appointed, Justice O'Donnell had a million-dollar advantage over his opponent that led to an Election Day rout.

Now that same opponent, Judge O'Neill, is back for a rematch. His campaign slogan: "No money from nobody."

Contributing to candidates for states' highest courts can be money well spent in at least one sense: the courts are very powerful. They have the last word on most of the issues that come before them. The United States Supreme Court has no jurisdiction over cases that present pure questions of state law, and in any event it hears only about 80 cases a year.

The states use various methods to choose their judges. The approaches are often some combination of nominating commissions, governors' and legislative action, and popular voting, including partisan contests and retention elections. Political machines still play a role in some states. In the federal system, by contrast, judges are appointed by the president, confirmed by the Senate and awarded lifelong tenure.

"Although there may be no good method of selecting and retaining judges, there is a worst method, and Ohio is among the states to have found it," Paul D. Carrington and Adam R. Long wrote in a 2002 study of the Ohio Supreme Court in the law review of Capital University here in Columbus. "That worst method is one in which judges qualify for their jobs by raising very large sums of money from lawyers, litigants and special interest groups, and retain their offices only by continuing to raise such funds." The problem, the authors found, is not a new one, but one that grows with the sums involved.

Ohio started electing judges in 1851, and the system seems unlikely to change. Voters overwhelmingly rejected a proposed return to an appointive system in 1987. In the 1980's, a campaign for a seat on the Ohio Supreme Court cost $100,000, compared with the $2 million a candidate may raise and spend these days.

Much of the recent spending came from business groups furious with what they called a liberal "Gang of Four" on the court after a pair of 1999 decisions. One of the decisions struck down a law revising the treatment of injury cases. The other interpreted employers' insurance policies broadly to cover some off-the-job injuries.

In 2000, business groups mounted a multimillion-dollar campaign to unseat Justice Alice Robie Resnick, a Democrat who wrote the first decision and joined the second. One advertisement showed a female judge switching her vote after someone dropped a bag of money on her desk.

Her opponent was Judge O'Donnell. He refused to denounce the attack advertisements, which seemed to backfire with voters. Justice Resnick won the election with 57 percent of the vote.

From that election on, "Ohio became a poster child for everything that was wrong with judicial elections," said Mr. Weisenberg, the Ohio State Bar Association official.

Money poured in, from political parties, from trial lawyers and especially from business interests. Contributions from people and entities affiliated with the finance and insurance industries totaled more than $800,000 in 2004. Doctors and the health care industry contributed more than $440,000.

The Balance of Power Shifts

Interest groups on the other side give, too, and the justices they support overwhelmingly vote their way. But Justice Pfeifer says the balance of financial power has shifted to business groups.

"I don't care how well a trial lawyer does or how big a pot a labor union has," he said, "they can't begin to match the business corporations. It's not a fair fight."

Justice Stratton, a Republican, said the recent contributions from business groups were a predictable consequence of a series of rulings "very strongly in favor of trial lawyers."

"You only have the big money coming out," she said, "when the court has swung too much to the left or to the right."

In 2002, Lt. Gov. Maureen O'Connor, a Republican, won a seat on the court, replacing a more liberal Republican justice and altering the balance. Her campaign took more than $330,000 from affiliates of insurance companies and medical groups. Not long after she joined the court, Justice O'Connor wrote the opinion that overruled the 1999 insurance decision. Only four years after the court ruled that employers' insurance policies covered many off-the-job injuries, it reversed course. "It serves no valid purpose to allow incorrect opinions to remain in the body of our law," Justice O'Connor wrote for the majority. The vote was 4 to 3.

The shift in personnel had a prompt impact on other cases, too. Since then, law firms that work mostly for

plaintiffs have fared poorly in the court. A look at a sample of 14 big plaintiffs' firms showed that they won 64 percent of the cases in the study before 2003. In the next three years, after the rise of the court's conservative wing, their success rate dropped to 17 percent. Since 1995, Ohio has imposed campaign contribution limits. They are $3,000 from individuals and $5,500 from organizations for each judicial election. Primary and general elections are counted separately.

A Critic Takes On the System

But, depending on how donations from individuals and political action committees are counted, the limits do not stop some businesses from making very large aggregate contributions. Affiliates, employees, officers and directors of the Cincinnati Insurance Company, for instance, gave more than $200,000 to Ohio Supreme Court candidates from 1998 through 2004.

Joan Shevchik, a spokeswoman for the parent company of Cincinnati Insurance, Cincinnati Financial Corporation, cited the effort to overturn the 1999 decision as a reason for the contributions, but emphasized that the corporation itself gave nothing. "As insurance professionals," she said, "each of us sees up close the immediate impact that the Ohio Supreme Court has on the industry, our company and our policyholders."

There is a small printing press in the garage of Judge O'Neill. In the evenings, he and his children produce fliers for a long-shot no-money campaign for Justice O'Donnell's seat on the Ohio Supreme Court.

"We're going to do a million pieces for $4,000 from my pocket," Judge O'Neill said, explaining that he will not accept a penny in contributions. Even some of his supporters view his effort as quixotic, notwithstanding the higher ratings Judge O'Neill gets from many Ohio bar associations.

"They're out soliciting the next million dollars to beat me," he said. "The insurance industry, the manufacturers and now the doctors treat the Ohio Supreme Court as a personal piece of property."

Justice Resnick, the last Democrat on the court, is retiring this year, and her seat is also open, making an all-Republican court next year a distinct possibility.

Marc Dann, a Democratic state senator running for attorney general, said Judge O'Neill's strategy might have been driven by necessity as well as principle.

"Best case," Mr. Dann said, "maybe he goes to the plaintiff's bar and labor unions, and maybe he raises $300,000. To do a good week of TV in Ohio is $750,000."

Judge O'Neill's assertion that seats on the Supreme Court are for sale infuriates many in the legal establishment in Ohio, and in July 2004 the Disciplinary Counsel of the Ohio Supreme Court began an investigation into whether Judge O'Neill had violated judicial ethics by making similar statements in the last campaign.

Judge O'Neill laughed when asked if the investigation worried him.

"I am a Vietnam veteran, and I lost my wife 10 years ago," he said. "I raised four kids by myself. When you talk about fear, I fear big things in life. Being hauled before a disciplinary counsel does not qualify."

For the time being, a federal judge has suspended the investigation on First Amendment grounds. If the Ohio Legislature is troubled by Judge O'Neill's conduct, the federal judge, Ann Aldrich wrote, "the proper solution is to stop electing judges and make state judgeships appointed offices."

Judge O'Neill disagreed. He likes elections, he said.

"We have more authority over people's lives than anyone else in elected office," he said. "We decide who goes to jail and who gets out of jail. We decide what happens to your life savings after you die. We decide whether or not you will be permitted to finish raising your child. I can't think of any other industry that has a more profound impact on people's lives. And it is arrogant at best that some committee should make this appointment."

But Chief Justice Moyer said the flaws in Ohio's approach were the product of elections.

"In a perfect world," he said, "you would have justices being selected not based on the amount of money their campaign committees can raise from various interests, but on their character and record — and somewhat on judicial philosophy, certainly, but in a more abstract way."

Adam Liptak reported from Columbus, Ohio, and New York, and Janet Roberts reported from New York. Mona Houck contributed reporting from New York.

EXHIBIT 11

APR 16 2002

HONORABLE JOSEPH A. THIBODEAU

The Prince Law Firm PS

FILED

APR 15 2002

DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE WASHINGTON FOR THE COUNTY OF SNOHOMISH

In Re the Marriage of: VIVECA SANAI, Petitioner, and SASSAN SANAI, Respondent.	Case No.: No. 01-3-0054-5 DECREE OF DISSOLUTION (DCD)(CLERK'S ACTION REQUIRED)

3.9 CONTINUING RESTRAINING ORDER.

Both parties are restrained and enjoined from assaulting, harassing, molesting or disturbing the peace of the other party. Both parties are restrained from going onto the grounds of or entering the home or workplace of the other party.

VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 3.8 WITH ACTUAL KNOWLEDGE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT THE VIOLATOR TO ARREST. RCW 26.09.060.

[CLERK'S ACTION. The clerk of the court shall forward a copy of this order, on or before the next judicial day, to: Snohomish County Sheriff's Office, which shall enter this order into any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants. **(A law enforcement information sheet must be completed by the party or the party's attorney and provided with this order before this order will be entered into the law enforcement *computer system.*)**

EXPIRATION

This restraining order expires on: February 25, 2005.

This restraining order supersedes all previous temporary restraining orders in this cause number.

3.10 NAME CHANGES

Does not apply.

3.11 APPOINTMENT OF SPECIAL MASTER

Phillip Maxeiner is appointed as special master.

3.12 DUTIES OF THE SPECIAL MASTER

(A) Take control of the Morgan Stanley, U.S. bank and Washington Federal accounts and from the proceeds pay to the wife the sums of $261,152 34 and $2500 00 Mr. Maxemer shall pay the husband $50,000.00. Mr. Maxemer shall pay the community debts of the parties as set forth in **Exhibit C.** All remaining sums shall be held in trust pending further hearing by this court.

(B) Sell the parties' Toyota Camry and Volvo and distribute the proceeds equally between the parties.

(C) Determine the taxes and penalties attributable to Internal Medicine & Cardiology Inc. P.S. The parties shall set a factual hearing to determine the community's liability, if any, for taxes and penalties attributable to Internal Medicine & Cardiology Inc. P.S. and for corporate debt set forth in sections 1.10 and 1.19 of the findings of fact and conclusions of law.

(D) Phillip Maxemer shall list the family home and the vacant lot located on Talbot Road immediately, or no later than May 6, 2002, for sale.

3.13 FEES FOR THE SPECIAL MASTER

Shall be determined by agreement of the parties or at a subsequent court hearing

3 14 PERSONAL PROPERTY

The personal property listed in **Exhibit 19** shall be distributed between the parties according to agreement.

3.15 FIREARMS

The wife shall immediately return to Mary McCullough her two firearms.

EXHIBIT 12

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

In Re the Marriage of: VIVECA SANAI, Petitioner, and SASSAN SANAI, Respondent.	Cause No. 01-3-00054-5

VERBATIM REPORT OF PROCEEDINGS

VOLUME II

(Pages 160-350)

November 14, 2001

Snohomish County Courthouse

Department 10

Everett, Washington

Dennis W. Erickson
Official Court Reporter
Wash CSR # E-R-I-C-KD-W 525BU

the form of a shareholder loan; correct?
A Correct.
Q In addition to that he was getting the paper transaction of income that you would do at the end of every fiscal year?
A Correct.
Q Now, in all these dealings, all these financial dealings that you dealt with with Dr. Sanai, both for personal reasons and corporate reasons, you never even had a phone call with Viveca Sanai, did you?
A That is true.
Q You've never ever directed any correspondence to the family residence; correct?
A That is correct.
Q All went to the Doctor's office?
A All went to the North 200th office.
Q At his direction?
A Correct.
Q In fact, you have only worked with Dr. Sanai related to any of these financial issues?
A Correct.
Q One hundred percent with Dr. Sanai?
A Correct.
MR. LEINBACK: I have nothing further, Your Honor.

EXHIBIT 13

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

In re the Marriage of: VIVECA SANAI, Petitioner, and SASSAN SANAI, Respondent.	No. 01-3-00054-5 ORDER ON RESPONDENT'S MOTION TO DISQUALIFY FREDRIC SANAI

THIS MATTER having come on before the court upon the Respondent's Motion to Disqualify Fredric Sanai; the Petitioner being represented by her counsel of record, Robert E. Prince/Fredric Sanai; Respondent being represented by his counsel of record, William R. Sullivan and Marsh Mundorf Pratt Sullivan & McKenzie; the court having reviewed the files and records herein and being fully advised in the premises, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

Respondent's motion shall be and the same is hereby granted, and Fredric Sanai shall be disqualified from representing Petitioner.

2.

DONE IN OPEN COURT this 27th day of September, 2002.

JUDGE JOSEPH A. THIBODEAU

Presented by:

MARSH MUNDORF PRATT SULLIVAN & McKENZIE

WILLIAM R. SULLIVAN, WSBA 8196
Attorneys for Respondent

Copy received, Approved for entry,
Notice of presentation waived:

ROBERT E. PRINCE, WSBA
Attorney for Petitioner

FREDRIC SANAL, WSBA
Attorney for Petitioner

EXHIBIT 14

MR. PRINCE: The lis pendens.

THE COURT: No, it's to be struck immediately. The sale is to be concluded within ten days, unless the bond is posted or the Court of Appeals elects to stay it, so there's no misunderstanding.

MR. PRINCE: Yes.

THE COURT: Having been unclear as to that request for sanctions as it relates to that matter, that would be denied.

The next matter is the motion for the protective orders, and I'm satisfied that considering the record in this case and the statutory scheme, I could deny the protective order as it relates to Ms. Tuson. I'm also finding that particular motion for the protective order is frivolous. I would impose sanctions of $1,000 against petitioner in this particular matter.

As it relates to the motions to disqualify both Mr. Sullivan and Mr. Sanai, I'm satisfied that I would deny the request to disqualify Mr. Sullivan, based on the record in this particular case. But as it relates to Mr. Sanai, I would in fact order disqualification effective today, and that based on my understanding of this record and his interaction as a party, a potential witness, he has overstepped the bounds of being a counsel in this particular case, that the record

clearly demonstrates that he should in fact be disqualified in this particular case. He's actually bringing more heat to this case than he is anything else. He's a party suing the very individual he's now attempting to be a representative against. That seems to be a conflict on its face. Therefore, I would disqualify him. Obviously, it's effective immediately, but I suspect it will be subject to review by the Court of Appeals. So he has "X" number of days to bring his petition for discretionary review of that particular ruling. I think that covers all of the motions, Your Honor.

MS. LAYMAN: Your Honor, on the motion that we set over regarding Brewe Layman --

THE COURT: I'm going to consider that on the record on October 7th.

MS. LAYMAN: Without oral argument.

THE COURT: Without oral argument.

MS. LAYMAN: I just wanted to put that on the record, make sure it's all clear. We'll not appear. You'll issue a written decision.

THE COURT: That's correct. It will be a letter decision.

MS. LAYMAN: Letter decision. Thank you, Your Honor.

EXHIBIT 15

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle
98101-4170

DIVISION I
One Union Square
600 University Street
(206) 464-7750
TDD: (206) 587-5505

November 4, 2002

Fredric Sanai
Rm 106
535 NE 5th
McMinnville, OR. 97128

Viveca Sanai
8711 Talbot Rd.
Edmonds, WA. 98026

Mary Kathryn Stephens
Marsh Mundorf Praff &
Sullivan
Pmb 3605
2525 Broadway
Everett, WA. 98201-3020

William Richard Sullivan
Marsh Mundorf Pratt Sullivan
16504 9th Ave SE Ste 203
Mill Creek, WA. 98012-6308

CASE #: 50374-0-I
Viveca Sanai, Appellant/cross-Respondent v.
Sassan Sanai, Respondent/cross-Appellant

Counsel:
The following notation ruling by Commissioner Susan Craighead of the Court was entered on November 4, 2002:

" Both parties appeared on November 1, 2002 to argue three parties' motions. Appellant seeks orders reversing three orders entered in the trial court. The first order requires her to lift her notice of lis pendens concerning an undeveloped property at issue in this dissolution. The second order denied a motion for a protective order and order to seal court files allegedly related to the health care information a third party, Dorothy Tuson, who had agreed to act as surety for a supersedeas bond. The third order disqualifies Fredric Sanai from representing Appellant in the trial court.

The parties appear to believe that the motions process in the Court of Appeals is an appropriate avenue for addressing these issues. It is not. All three motions require decisions on the merits; that is, they require this court to reverse decisions taken by a trial court. RAP 17.1(a) provides that a "person may seek relief, *other than a decision on the merits*, by motion." (emphasis added). This rule specifically excludes from consideration by motion the issues Appellant raises. Moreover, to the extent that a Commissioner may decide a case on the merits, a Commissioner does not have the power to reverse a decision by the trial court. RAP 18.14. Accordingly, these motions will be denied without any discussion of their merits because they are not properly before me.

If Appellant is aggrieved by the trial court's rulings, counsel should consult RAP 2.2(a) and RAP 2.3(b) to determine the appropriate mechanism for seeking relief in this court. Counsel for Appellant indicated at oral argument that he believed he had to bring these motions to preserve his record. Counsel misunderstands the appellate process. The record is made in the trial court. I will not impose sanctions on counsel for Appellant for bringing these motions because he was directed to note them by this court. However, counsel is on notice that frivolous motion practice in this court could lead to sanctions.

Now, therefore, it is hereby

ORDERED that the motion to reverse the order requiring Appellant to lift her notice of lis pendens is denied; it is further

ORDERED that the motion to reverse the order denying a protective order and order sealing is denied; it is further

ORDERED that the motion to reverse the order disqualifying Fredric Sanai as counsel for Appellant is denied."

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

twg

EXHIBIT 16

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

IN RE THE MARRIAGE OF: VIVECA SANAI, Appellant/Cross-Respondent, and SASSAN SANAI, Respondent/Cross-Appellant.	No. 50374-0-I
IN RE THE MARRIAGE OF: VIVECA SANAI, Appellant/Cross-Respondent, and SASSAN SANAI, Respondent/Cross-Appellant.	No. 51303-6-I
IN RE THE MARRIAGE OF: VIVECA SANAI, Appellant/Cross-Respondent, and SASSAN SANAI, Respondent/Cross-Appellant.	No. 51707-4-I ORDER

Viveca Sanai seeks review of the following post-dissolution trial court rulings: rulings entered on or dated September 27, 2002, October 7, 2002, October 11, 2002, and December 20, 2002. These rulings have been challenged in this court under cause

numbers 50374-0-I, 51303-6-I, and 51707-4-I. A commissioner referred the cases to a panel of judges for consideration of appealability and, in the alternative, whether any of the rulings merit discretionary review.

Upon consideration of the parties' arguments, we conclude that the challenged rulings are not appealable under RAP 2.2(a). Nor do any of the rulings satisfy the criteria governing discretionary review. See RAP 2.3(b). Accordingly, Viveca Sanai's motion to consolidate review of the trial court's post-dissolution rulings with her appeal from the dissolution decree is denied, and the appeals filed under No. 51303-6-I and No. 51707-4-I are dismissed.

Viveca Sanai's appeal from the dissolution decree, No. 50374-0-I, shall proceed. Appellant's opening brief, which is overdue, shall be filed no later than April 7, 2003. No further extensions should be expected.

Respondent Sassan Sanai has requested an award of attorney fees under RAP 18.9 for having to respond to frivolous motions. We deny the request without prejudice at this time. But Mr. Sanai may include such fees in any request for attorney fees at the conclusion of the appeal. We caution that any future frivolous motions will result in sanctions.

Now, therefore, it is hereby

ORDERED that the trial court's rulings entered on or dated September 27, 2002, October 7, 2002, October 11, 2002, and December 20, 2002, are not appealable; and, it is further

ORDERED that Viveca Sanai's alternative motions for discretionary review are denied; and, it is further

ORDERED that Viveca Sanai's motion to stay the federal tax return provisions of the December 20, 2002 ruling is denied; and, it is further

ORDERED that the motion to consolidate is denied; and, it is further

ORDERED that the appeals filed under No. 51303-6-I and No. 51707-4-I are dismissed; and, it is further

ORDERED that the appeal in No. 50374-0-I shall proceed and Viveca Sanai shall file her opening brief no later than April 7, 2003; and, it is further

ORDERED that Sassan Sanai's request for attorney fees is denied without prejudice.

Done this 1st day of March, 2003.

Appelwick, J.

Agid, J.

Baker, J.

EXHIBIT 17

this description. And Ms. Sanai points to nothing in the record showing that the individual she chose has sufficient assets, nor has she provided a sufficient record to assess the trial court's decision to require a cash or commercial bond.

Given this reasoning, the request for a stay is denied, and Ms. Sanai' motions objecting to the supersedeas decision are likewise denied.

Finally, I note that also pending before the court (on my May 22, 2003, motion calendar) is Ms. Sanai's motion for discretionary review involving several other postdecree orders. Among those is an order disqualifying Frederic Sanai from further representing her in this action. The Court of Appeals held that none of these decisions were appealable, and denied discretionary review as to each. Apparently, these trial court decisions were never stayed. And since the Court of Appeals denied review, they remain in effect. This raises the issue whether Frederic Sanai had the authority to continue to represent Viveca Sanai in these appellate court proceedings, as he has done, and whether his pleadings should even be considered by the appellate courts. The parties are directed to file memoranda on this issue, not to exceed five pages, no later than May 15, 2003, for consideration with the motion for discretionary review.

COMMISSIONER

May 7, 2003

EXHIBIT 18

THE SUPREME COURT OF WASHINGTON

In re the Marriage of VIVECA SANAI, Petitioner, and SASSAN SANAI, Respondent.	ORDER No. 73751-7 C/A No. 51303-6-I & 51707-4-I

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Ireland, Chambers and Fairhurst, considered this matter at its September 3, 2003, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the pending Motions to Modify and all of the other pending motions, whether filed by the Petitioner, Ms. Viveca Sanai, or filed by Mr. Fredric Sanai, are denied. A sanction in the amount of $1000 is jointly and severally impose against the Petitioner, Ms. Viveca Sanai, and Mr. Fredric Sanai, and in the favor of the Respondent, Mr. Sassan Sanai. The sanction shall be paid to the Respondent's counsel by not later than October 3, 2003.

DATED at Olympia, Washington this 5th day of September, 2003.

For the Court

Gerry L. Alexander
CHIEF JUSTICE

#5/207

EXHIBIT 19

NO. 50374-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In Re the Marriage of:

VIVECA SANAI, Appellant,

and

SASSAN SANAI, Respondent.

OPENING BRIEF OF APPELLANT (PRO SE ALTERNATIVE)

Viveca Sanai
8711 Talbot Road
Edmonds, Washington 98026
Tel.-fax (425) 774-7400

Inc., and if it did have such jurisdiction, is such a ruling an abuse of discretion?

4. **Issue No. 4**

Did the trial court have the jurisdiction to order that one spouse's accountant determine the Federal taxes payable by the other spouse and require the other spouse to pay the amount to be determined after the other spouse had filed and paid her taxes a separate basis?

5. **Issue No. 5**

Does the trial court have the authority to appoint the accountant of a spouse "to take charge of community property upon a decree to manage and dispose of the property as the court may direct" when such accountant meets none of the requirements of a receiver under RCW 7.60, and if it does have such authority, was it an abuse of discretion to exercise such authority in this case?

6. **Issue No. 6**

Was there substantial evidence justifying the award of $50,000 as a separate property interest in the family home?

7. **Issue No. 7**

Was it an abuse of discretion for the trial court to decline to compel Sassan to answer questions regarding the illegal wiretap tapes and to hand

(1986). The trial court cannot award property to Mary McCullough, validate Sassan's transfer of community assets to her or determine the Federal tax liabilities of Viveca. Similarly, the trial court completely lacks jurisdiction to order that debts or taxes of IMC, a separate, validly existing corporation, be paid out of community assets. The court also made associated findings of fact and conclusions of law that were completely unsupported by the evidence.

The second fundamental error was in appointing Sassan's accountant Philip Maxeiner as a "Special Master", but then imbuing him with the power and authority of a receiver when Maxeiner does not and cannot meet the mandatory qualifications of a receiver under RCW 7.60.

The third fundamental error was in denying discovery of Sassan's illegal wiretapping activities. Viveca had a right to obtain discovery regarding the wiretap tapes: first, because they were either separate of Sassan or community property subject to division under the divorce proceedings, and second, they constituted evidence to determine what assets Sassan may have squandered or hid.

The trial court found that Sassan had a $50,000 separate property interest in the house, after ruling that there was no evidence substantiating this claim. This award was a manifest abuse of discretion and completely at odds with and contradicts the trial court's findings of facts.

reference to "*attorney* or other person interested in an action" dictates that no representative or advisor to a party may be appointed receiver. The reason for this is obvious. The receiver owes a duty to the court and all parties--it is completely inconsistent with principles of wise judicial administration to entrust the assets at the center of a conflict to a person who is not neutral. Indeed, the Washington Supreme Court disbarred a lawyer who engineered the appointment of a receiver he secretly controlled in order to fraudulently place a corporation he owned into receivership as a defense against an employee lawsuit. *In re Little*, 40 Wn.2d 421 (1952).

The trial court unquestionably has the power to appoint a receiver in a divorce case. RCW 7.60.020(2), RCW 7.60.020(6). Viveca does not necessarily object to the appointment of neutral, valid receiver. However, Maxeiner's appointment is in violation of the statutory rules the Legislature created to protect parties whose properties are entrusted to a receiver. Therefore this Court should reverse the appointment of Maxeiner to take control of any community assets, and instruct the trial court to order Maxeiner to return all property he may be holding to the control of the trial court, the sheriff, or a validly appointed receiver. Further, Maxeiner should be barred for making any claims for his supposed services as a receiver, as his appointment was in violation of RCW 7.60 and thus against public policy.

EXHIBIT 20

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate reports but will be filed for public record pursuant to RCW 2.06.040. IT IS SO ORDERED

Mary Kay Baker

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

In Re the Marriage of:	DIVISION ONE
VIVECA SANAI, Appellant,	NO. 50374-0-I
vs.	**UNPUBLISHED OPINION**
SASSAN SANAI, Respondent.	FILED: DEC 22 2003

BAKER, J. – The superior court dissolved Viveca and Sassan Sanai's marriage and equally apportioned the community assets between them. Viveca appeals, challenging the trial court's ruling that two firearms in the family home belonged to a third party, the court's allocation of corporate debts to the community, the trial court's decision utilizing a referee to liquidate certain assets, and the court's finding that Sassan had purchased two lots during the marriage with his own separate funds. She also requests a new trial because an audio tape discovered after the trial allegedly shows that Sassan lied about corporate assets.

appeal by our Supreme Court.[16] A court's equitable power is broad, and it is within the trial court's equitable power to require parties to file a joint tax return.

She also challenges the trial court's decision appointing Maxeiner as special master, claiming that he fails to satisfy the requirements under the rule. Maxeiner functioned as a referee, and not as a special master. The trial court is granted broad authority to appoint receivers and referees to supervise the sale of properties and distribution of funds. Any error of nomenclature in referring to Maxeiner in the decree was incidental, and not substantive.

Viveca next argues that Sassan failed to provide adequate documentation establishing that he paid for the two lots with separate funds gifted by his father. But in its conclusions of law, the court ruled that Sassan "has a separate property interest in the family home and vacant lot. Husband shall be paid $50,000 from property held by Philip Maxeiner." And testimony by Sassan and his sister did show that the Sanai family did not have sufficient funds to purchase the properties with cash, and that his father had sold property to provide Sassan with the necessary funds. Because substantial evidence supports this conclusion, we affirm the court's conclusion of law.

We also reject Viveca's claim that the trial court erred in failing to compel Sassan to answer interrogatories or hand over alleged wiretap tapes. While much has been made of alleged wiretap tapes, we find no abuse of discretion in any of the challenged orders or decisions by the trial court.

---

[16] See Jones v. Hollingsworth, 88 Wn.2d 322, 560 P.2d 348 (1977).

EXHIBIT 21

NO. 50374-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In Re the Marriage of:

VIVECA SANAI, Appellant,

and

SASSAN SANAI, Respondent.

MOTION FOR RECONSIDERATION AND FOR VACATION OF COURT OF APPEALS OPINION FOR VIOLATION OF APPEARANCE OF FAIRNESS DOCTRINE AND CODE OF JUDICIAL CONDUCT CANON 3(D)(1)

Viveca Sanai
8711 Talbot Road
Edmonds, Washington 98026
Tel.-fax (425) 774-7400

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I. INTRODUCTION

Appellant Viveca Sanai ("I" or "me") filed a brief and supporting documents that demonstrated the trial court's failure to stay within its proper jurisdictional bounds and its tolerance of what subsequent evidence demonstrated was obvious perjury. The after-discovered evidence consisted of wiretap tapes, financial declarations that were inconsistent with Sassan's lavish lifestyle and bank records demonstrating that his claims that the medical practice yielded no income were false.

The trial court refused to consider this evidence on a CR 60(b) motion. This Court refused to allow me to challenge the denial of the CR 60(b) motion, ruling contrary to the Rules of Appellate Procedure and numerous cases that a denial of CR 60 motion is "not appealable." The result is that Respondent Sassan Sanai's perjury has proved a success.

I have struggled throughout this litigation to determine what is causing the appellate courts to blatantly ignore their own precedent and issue opinions that either ignore or mischaracterize my arguments, and indeed which read more like the respondent's brief than a judicial opinion. I have now solved one element of the puzzle.

I have just discovered that Justice William W. Baker, who wrote the December 22, 2002 opinion in this docket (the "Opinion") and also signed the order dismissing my CR60(b) motion, was until 1990 a partner in the law firm of Anderson Hunter, then called Anderson, Hunter, Dewall, Baker & Collins. *See e.g. Himango v. Prime Time,* 37 Wn. App.

259, 680 P.2d 432 (1984); *Odegard v. Everett School Dist.*, 55 Wn. App. 685 (1989). Sassan was a client of the Anderson Hunter law firm for more than 15 years, and in particular was a client of the Anderson Hunter firm while Justice Baker was a partner. *See* V. Sanai Decl., ¶¶2-4; V. Antipolo-Utt Depo. at 11-18 (both attached hereto). Moreover, the Anderson Hunter firm prepared the ERISA plans which were a major asset of the divorce and advised Sassan on ERISA matters and possibly other matters as well. Thus Anderson Hunter's engagement was substantially related to the subject matter of the divorce.

Accordingly, my appeal was adjudicated by Sassan's former lawyer (or a partner who is imputed to be Sassan's former lawyer pursuant to RPC 1.10). This obvious conflict of interest, violation of the "appearance of fairness" doctrine, and violation of the Code of Judicial Conduct are compounded by this Court's holding that Philip Maxeiner was not a special master, but rather a referee, and that therefore his appointment was appropriate. Philip Maxeiner's exercise of the powers of a referee was a violation of statutory law, the appearance of fairness doctrine and due process.

The failure by Justice Baker or any other member of the panel to even disclose his past relationship with the Anderson Hunter firm, despite a reference to that firm in the appealed final decree and accompanying findings of fact and conclusions of law can only lead to an appearance of at best casual disregard for the requisite appearance of fairness and worst judicial misconduct. When considered in light of the opinion's multiple

misstatements of fact, mysteriously conclusory holdings of law on key issues, and statements of law which manifestly contradict prior holdings of both the Washington State Supreme Court and this Court of Appeals, it is clear that the entire opinion and all prior rulings involving this panel must be vacated and re-argued in front of Justices who have NO CONNECTION to any of the parties, their counsel or the factual matters in the appeal.

II. JUSTICE BAKER'S PARTICIPATION IN THIS CASE WAS A VIOLATION OF THE CODE OF JUDICIAL CONDUCT, THE APPEARANCE OF FAIRNESS DOCTRINE AND DUE PROCESS.

One of the primary assets of the community was Sassan's rights in ERISA retirement and profit sharing plans established by the corporation. These plans were drawn up by Sassan's counsel, the Anderson Hunter law firm of Everett, Washington. [50374 CP 64; November 21, 2002 RP 229:51-12, 221:24-25; V. Sanai Decl. ¶¶2-3 attached hereto.] Sassan engaged the Anderson Hunter law firm prior to 1988 for various legal needs and was continuously advised by that firm regarding the ERISA plans. [50374 CP 76; November 21, 2002 RP 229:51-12, 221:24-25; V Sanai Decl. ¶¶2-3 attached hereto.] In 1989 the name of Anderson Hunter was Anderson, Hunter, Dewall, Baker & Collins. *See Odegard v. Everett School Dist.*, 55 Wn. App. 685 (1989). The name "Baker" referred to William W. Baker, who was appointed a Justice of this Court in 1990.

"Due process, the appearance of fairness doctrine, and Canon

3(D)(1) of the Code of Judicial Conduct ("CJC")[1] require disqualification of a judge who is biased against a party or whose impartiality may reasonably be questioned." *Wolfkill Feed and Fertilizer Corp. v. Martin*, 103 Wn. App. 836, 841, 14 P.3d 877 (2000). The appearance of fairness doctrine has been elucidated by the Washington State Supreme Court as follows:

> It is fundamental to our system of justice that judges be fair and unbiased. [Citations.] An interest that is alleged to create bias or unfairness need not be direct or obvious. "Any interest, the probable and natural tendency of which is to create a bias in the mind of the judge for or against a party to the suit, is sufficient to disqualify. . . . Pecuniary interest in the result of the suit is not the only disqualifying interest." *Ex parte Cornwell*, 144 Ala. 497, 498-99, 39 So. 354 (1905). [CITATIONS.] These principles were long ago recognized by this court in *State ex rel. Barnard v. Board of Educ.*, 19 Wash. 8, 17-18, 52 P. 317 (1898), when it stated:
>
> > The principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea, running through and pervading the whole system of judicature, and

[1] Justice Baker's had a conflict of interest under the rules applicable to attorneys as well. If Justice Baker had moved to a different law firm in 1990 instead of to the judiciary, he would have been conflicted out of representing me against Sassan in the divorce, as Anderson Hunter was directly responsible for the creation and maintenance of the ERISA plan that was one of the prime assets of the divorce. RPC 1.10(b).

> it is the popular acknowledgment of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals.

Actions of courts which disregard this safeguard to litigants would more appropriately be termed the administration of injustice, and their proceedings would be as shocking to our private sense of justice as they would be injurious to the public interest. [Citations].

Our system of jurisprudence also demands that in addition to impartiality, disinterestedness, and fairness on the part of the judge, there must be no question or suspicion as to the integrity and fairness of the system, i.e., "justice must satisfy the appearance of justice." *Offutt v. United States,* 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954).

....

Thus it is apparent that even a mere suspicion of irregularity, or an appearance of bias or prejudice, is to be avoided by the judiciary in the discharge of its duties. [Citations] The Court of Appeals recently summarized this long standing principle rather well in *State v. Madry, supra* at 70:

> The appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of bias or prejudice. The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial.

Milwaukee R. R. v. Human Rights Comm'n, 87 Wn.2d 802, 807-809, 557 P.2d 307 (1976).

The "appearance of fairness doctrine" is thus a fundamental

component of procedural due process, deeply ingrained in the conception of what a "fair trial" or "fair review" means.

Until 1990, Justice Baker was a name partner in the small law firm, Anderson Hunter, which Sassan engaged prior to 1988 for his business affairs, including the creation of the ERISA plan. The attorney-client relationship clearly creates the appearance of a bias in favor of Respondent Sassan. Though Justice Baker was only one of three Justices involved in the March 11, 2003 and December 22, 2003 decisions, the participation of one tribunal member with a possible conflict of interest "infects the action of the other members...regardless of their disinterestedness." *Buell v. City of Bremerton,* 80 Wn.2d 518, 525, 495 P.2d 1358 (1972).

The Code of Judicial Conduct contain some concrete but non-exclusive applications of the appearance of fairness doctrine and due process principles underlying it. CJC 3(D)(1) provides:

> Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, **including but not limited to** instances in which:
>
> (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.
>
> ...
>
> (d) the judge previously served as a lawyer or was a material witness in the matter in controversy, **or a lawyer with whom the judge previously practiced law** served during such association as a lawyer

concerning the matter or such lawyer **has been a material witness concerning it;**

CJC 3(D)(1) (bold emphasis added.)

Here, the disputed evidentiary facts include Sassan's credibility. As Sassan was a former client of Judge Baker, he would naturally believe that his former client was telling the truth. Virginia Antipolo-Utt, a partner in Anderson Hunter at the time Judge Baker practiced there, was a material witness in the proceeding; her deposition was taken though she was not called to testify because of time constraints. [*See* V. Antipolo-Utt Depo at 3:11-18 attached as Exhibit A hereto; V. Antipolo-Utt Martindale-Hubbell listing attached as Exhibit B hereto.] Her testimony is reflected in the final judgment. Unlike attorney disqualification, which requires that the attorney be or be likely to be called as a "necessary witness at trial", there it makes no difference by what manner the "lawyer with whom the judge previously practiced law" appears as a "material witness" in the controversy for such appearance to automatically require disqualification of the judge.

There appears to be no reported Washington case involving a jurist who was a former partner of a law firm representing an opposing party in a civil matter related to the subject matter of the proceeding before that jurist. However, federal authority is instructive, as the federal courts employ a the same appearance of fairness standard as the Washington State courts. *State v. Bilal,* 77 Wn. App. 720, 722 (1995) ("We note that the federal courts are governed by the federal rules of judicial conduct.

See 28 U.S.C. § 455 (federal bench regulated by the appearance of impartiality standard)").

A Ninth Circuit Court of Appeals case sets out the minimal showing that must be made to disqualify a judge for his relationship to an interested party. *Preston v. United States of America,* 923 F.2d 731 (9th Circ. 1990). In *Preston,* the assigned Federal District Court judge, Judge Letts, had been of counsel at the law firm representing a third party witness prior to ascending to the bench, so the plaintiffs unsuccessfully moved to disqualify him. On appeal, the 9th Circuit Court of Appeals reversed, finding the connection between the judge and the firm representing a third party witness sufficient to create an appearance of doubtful impartiality. The 9th Circuit panel pointed out that:

> [t]he Supreme Court has never limited recusal requirements to cases in which the judge's conflict was with the parties named in the suit. *See Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988). Rather, the focus has consistently been on the question whether the relationship between the judge and an interested party was such as to present a risk that the judge's impartiality in the case at bar might reasonably be questioned by the public. *See id.* at 858-62, 108 S.Ct. at 2201-03.

Preston, supra, 923 F.2d at 735.

The United States Supreme Court's *Liljeberg* decision, cited by the 9th Circuit in *Preston,* is also instructive. In this case plaintiff Liljeberg was in litigation against defendant Health Services Acquisition Corp.

while simultaneously negotiating a transaction with Loyola University's hospital. The success of the Liljeberg/Loyola transaction depended on Liljeberg prevailing over Health Services. The judge in the Liljeberg/Health Services action was a trustee of Loyola University, and had received papers regarding the transaction between Liljeberg and the University prior to the Liljeberg/Health Services case being assigned to the judge. The judge forgot about the matter. After trial and before filing the opinion, the University brought the Liljeberg/University transaction to the judge's attention. Health Services discovered this and moved for disqualification. The District Court denied disqualification on the grounds that the judge had forgotten about the Liljeberg/University transaction and therefore could not have been influenced by it in rendering an opinion in the Liljeberg/Health Services litigation. The Court of Appeals reversed, and the Supreme Court affirmed the disqualification. It held that:

> advancement of the purpose of the provision--to promote public confidence in the integrity of the judicial process, *see* S.Rep. No. 93-419, p. 5 (1973); H.R.Rep. No. 93-1453, p. 5 (1974)--does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew.

Liljeberg, supra, 486 U.S. at 859-60.

Justice Baker's involvement in this appeal mandates not only Justice Baker's recusal in this appeal, but also the recusal of Justices

Appelwick, Agid and Ellington, who were involved in the manifestly erroneous March 11, 2003 decision and the similarly erroneous December 22, 2003 opinion, since Justice Baker's conflict of interest, violation of the CJC, and appearance of bias "infects the action of the other members...regardless of their disinterestedness." *Buell, supra* at 525. Violation of the appearance of fairness doctrine requires vacating the decision made by the tribunal and reconsideration by Justices previously not involved in this case. *Id.* at 525-6; *Preston, supra*, 923 F.2d at 735-736; *Liljeberg, supra*, 468 US at 867-869.

III. PHILIP MAXEINER IS INELIGIBLE TO ACT AS A REFEREE.

This Court agreed with me that the powers that the trial court granted to Philip Maxeiner were not the powers of a special master. This Court ruled that in fact Philip Maxeiner was appointed to act as a referee. Referees are persons appointed by a court to wield the power of the court, a kind of deputized judicial officer:

> A referee is a person appointed by the court or judicial officer with power --
>
> (1) To try an issue of law or of fact in a civil action or proceeding and report thereon.
>
> (2) To ascertain any other fact in a civil action or proceeding when necessary for the information of the court, and report the fact or to take and report the evidence in an action.
>
> (3) To execute an order, judgment or decree or to exercise any other power or perform any other duty expressly authorized by law.
>
> RCW 2.24.060.

Clearly, Maxeiner was granted the power to "execute an order judgment or decree" by the trial court. Because the powers of a referee are so broad, the express requirements for a person to be appointed as a referee are concomitantly rigorous:

> A person appointed by the court as a referee or who serves as a referee with the consent of the parties shall be:
> (1) Qualified as a juror as provided by statute.
> (2) Competent as juror between the parties.
> (3) A duly admitted and practicing attorney.
> RCW 4.48.040.

Philip Maxeiner manifestly fails two out of the above three conditions. Maxeiner is NOT a "duly admitted and practicing attorney." He is an accountant, as noted in the opinion. Maxeiner is NOT competent to act as a juror between the parties, as he is Sassan's accountant and was a witness at the dissolution trial, where he acknowledged that he answered only to Sassan. [November 14, 2002 RP 267:7-23.]

Maxeiner could not act as a referee, as he is not neutral, was a witness at trial, and is not an attorney. His appointment as referee was a violation of statute and my constitutional rights of due process, and thus illegal and void. Moreover, Maxeiner's status as a putative referee makes manifest that certain other of this Court's holdings in the opinion were erroneous.

IV. MY OPENING BRIEF ASSERTED THAT THE TRIAL COURT FAILED TO DISTRIBUTE THE TRAVELER'S CHECKS AND WIRETAPPING TAPES ONLY, AND THAT THE TRIAL COURT LACKED JURISDICTION

EXHIBIT 22

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

In Re the Marriage of: VIVECA SANAI, Appellant, vs. SASSAN SANAI, Respondent.	DIVISION ONE NO. 50374-0-I **ORDER DENYING MOTION FOR RECONSIDERATION**

The appellant, Viveca Sanai, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 29th day of January, 2004.

Judge

EXHIBIT 23

Court of Appeal No.
50374-7-I

SUPREME COURT OF THE STATE OF WASHINGTON

In Re the Marriage of:

VIVECA SANAI, Appellant,

and

SASSAN SANAI, Respondent.

PETITION FOR DISCRETIONARY REVIEW

Viveca Sanai, pro se
8711 Talbot Road
Edmonds, Washington 98026
Tel.-fax (425) 774-7400

Cyrus Sanai, pro se
8711 Talbot Road
Edmonds, Washington 98026
Tel.-fax (425) 774-7400

I. IDENTITY OF PETITIONER

Viveca Sanai and Cyrus Sanai (to the extent an attorney has standing to directly appeal a disqualification order, and if not then through Viveca Sanai) ask this court to accept review of the decisions of the Court of Appeals designated in Part B of this Motion.

II. COURT OF APPEALS DECISIONS

The decisions are the December 22, 2003 opinion (the "Opinion"), the January 29, 2004 denial of Viveca's motion for reconsideration, and the July 1, 2002 denial of Viveca's motion to modify the Commissioner's June 13, 2002 ruling upholding the denial of permission for Cyrus Sanai to appear pro hac vice.

III. ISSUES PRESENTED FOR REVIEW

1. Is it a violation of party's due process rights and the Code of Judicial Conduct for a justice to serve on the appellate panel and write the opinion when prior to ascending the bench the justice was a name partner in a small law firm then employed by the opposing party, and the justice's former partner was a witness in the proceedings?
2. Is it a violation of RCW 4.48.040, the jurisdiction of the Washington State Courts and a party's due process rights to appoint the opposing party's accountant who appeared as a witness at trial as a referee in the post-trial proceedings, including allowing the referee to file federal tax returns on behalf of the party.
3. Are the Court of Appeal's rulings that the trial court has jurisdiction in

the judge and the firm representing a third party witness sufficient to create an appearance of doubtful impartiality. Review of the Court of Appeals' decision is thus appropriate under RAP 13.4(b)(1)-(3).

2. THE APPOINTMENT OF PHILIP MAXEINER AS REFEREE WAS A VIOLATION OF DUE PROCESS, RCW 4.48.040 AND THE JURISDICTION OF THE SUPERIOR COURT.

The Court of Appeal agreed with Viveca that Maxeiner was not a special master, but rather surprisingly ruled he was a referee, given that Maxeiner did not meet the requirements for taking this judicial office under RCW 4.48.040. Maxeiner is not a "duly admitted and practicing attorney." RCW 4.48.040(3). He is an accountant, as noted in the opinion. Maxeiner is not competent to act as a juror between the parties, as he is Sassan's accountant and was a witness at the dissolution trial, where he acknowledged that he answered only to Sassan. [11/14/2001 RP 267:7-23.] RCW 4.48.040(2). Maxeiner's appointment was thus a violation of statute, the appearance of fairness doctrine, and Viveca's due process rights.

The Court of Appeals ruled that the trial court and its referee could compel Viveca to execute particular tax returns. This decision is in conflict with *Marriage of Haugh*, 58 Wn. App. 1, 79 P.2d 1266 (1990). In *Haugh*, the trial court ruled that a trial court's ordering one spouse to pay tax on the other's income was outside its jurisdiction; although the "state retain broad authority in the area of domestic relations [citation] this is a matter fully within the federal sphere, and preempted by the Internal Revenue Code. The court's order exceeded the scope of its authority in this area." *Id.* at 10.

identify the assets and their disposition; the requisite specificity is not present if an asset is not even mentioned"), and this Court's decision *Yeats v. Estate of Yeats*, 90 Wn.2d 201, 205, 580 P.2d 61 (1978). Accordingly, review should be granted under RAP 13.4(b)(1)-(2).

8. THE LOWER COURT'S REFUSAL TO GRANT PRO HAC VICE STATUS TO CYRUS AND DISQUALIFICATION OF FREDRIC SANAI WERE VIOLATIONS OF VIVECA'S DUE PROCESS RIGHTS.

The disqualification of Fredric and the refusal to grant Cyrus pro hac vice status were irrational and not based on any published case or rule. The fact that they are Sassan's children is not relevant under any rule or case; the fact that they are suing Sassan is not a conflict of interest under Washington or California rules of professional responsibility, and neither were a witness at trial. Both actions deprived Viveca of her constitutional right appellate and post-final judgment counsel of her choice, and violated Cyrus' rights to substantive due process and equal protection.

VI. CONCLUSION.

This Court should grant review, vacate the ruling of the Court of Appeals and the trial court's property distribution, reverse all awards of attorneys fees and sanctions, reverse the order disqualifying Fredric Sanai from representing Viveca, grant Cyrus permission to appear pro hac vice, return all property and funds alienated by Maxeiner, and award Viveca attorneys fees based on Viveca's financial need and costs on appeal.

Dated this 1st day of March, 2004

Viveca Sanai
Viveca Sanai, pro se

Cyrus Sanai
Cyrus Sanai

EXHIBIT 24

denying Cyrus permission to appear met this standard. Cyrus' familial relationship does not create a conflict between his duties to Viveca and to Sassan, as Cyrus never represented Sassan and Cyrus has as close an identity of interests with Viveca as any lawyer will ever have to his client. Like Fredric, Cyrus was not a witness at trial. Accordingly, there was no reason whatsoever to prevent Cyrus from acting as Viveca's advocate.

2. THE APPOINTMENT OF PHILIP MAXEINER AS REFEREE WAS A VIOLATION OF DUE PROCESS, RCW 4.48.040 AND THE JURISDICTION OF THE SUPERIOR COURT.

RCW 4.48.040 states categorically that a " person appointed by the court as a referee or who serves as a referee with the consent of the parties shall be...(2) Competent as juror between the parties [and] (3) A duly admitted and practicing attorney." Respondent concedes that Maxeiner meets neither of these requirements, but argues that despite the absolute nature of the statutory language, these requirements only apply to referees appointed to hold trials and not referees appointed to undertake other tasks as delineated in RCW 2.24.060. There are two fatal problems with this argument. First, the plain language of RCW 4.48.040 does not confine its statement of the minimum qualifications for a referee to referees who conduct a trial. It states the qualifications for ANY "person appointed by the court as a referee". The second problem is that RCW 2.24.060, which dates back to 1891, contains no discussion whatsoever of the qualifications

of a referee. Indeed, RCW 4.48.040 is the only statute, anywhere in the RCW, setting out the qualifications for a referee for any purpose. If RCW 4.48.040 does not apply, then there are no statutory standards whatsoever applicable to the appointment of a referee who is charged with something other than conducting a trial. That conclusion is absurd, not only because it would allow the appointment of a five year old child or a convicted embezzler hiding out in Rio de Janeiro as a referee, but also because the Washington State Constitution clearly states that appointment of subsidiary or temporary judicial officers and tribunals shall be on terms specified by the Legislature. WA CONST. Art. IV. Sect. 1,12. The Legislature has explicitly set out those terms in a statute that does not limit itself to referees conducting trials. The judicial branch lacks the authority under the Washington State Constitution to override the explicit limits set by the Legislature, no matter what 'equitable powers' the Court of Appeals may believe it is imbued with.

Even if Respondent and the Court of Appeals were correct, and there are absolutely no statutory standards whatsoever governing whom a judge can appoint as a referee to dispose of over a million dollars of property, the appointment of Maxeiner would still be illegal as a violation of the federal due process guarantee imposed on the states by the Fifth and Fourteenth Amendments . Basic principles of due process require that that

EXHIBIT 25

EXH. A

THE SUPREME COURT OF WASHINGTON

In re the Marriage of

VIVECA SANAI,

Petitioner,

and

SASSAN SANAI,

Respondent.

NO. 75216-8

ORDER

C/A NO. 50374-0-I

FILED
SUPREME COURT
STATE OF WASHINGTON
2004 OCT -7 A 11:18
BY CATHERINE W. SMITH
CLERK

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Ireland, Chambers and Fairhurst (Justice Bridge sat for Justice Ireland), considered this matter at its October 5, 2004, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That consideration of the Petition for Review and all pending motions is continued to the Court's November 4, 2004 En Banc conference.

DATED at Olympia, Washington this 7th day of October, 2004.

For the Court

Jerry L. Alexander
CHIEF JUSTICE

THE SUPREME COURT OF WASHINGTON

In re the Marriage of

VIVECA SANAI,

Petitioner,

and

SASSAN SANAI,

Respondent.

NO. 75216-8

ORDER

C/A NO. 50374-0-I

FILED
SUPREME COURT
STATE OF WASHINGTON
2004 NOV -5 P 3:20
BY C.J. GERRITT
CLERK

This matter came before the Court on its November 4, 2004, En Banc Conference. The Court considered the Petition and the files herein. A majority of the Court voted in favor of the following result:

IT IS ORDERED:

That the Petition for Review is denied. All other pending motions are denied. The Court on its own motion, pursuant to RAP 18.9, imposes a sanction in the amount of $4,000 against Viveca Sanai to be paid to this Court. The sanction is imposed for filing frivolous pleadings for the purpose of delay. No further pleadings submitted by Viveca Sanai will be filed or acted upon in the Supreme Court or the Court of Appeals until the sanction is paid.

DATED at Olympia, Washington this 5th day of November, 2004.

For the Court

Gerry L. Alexander

CHIEF JUSTICE

Filed COA 11-16-04

465/113

EXHIBIT 26

VIRGINIA C. ANTIPOLO-UTT, being first duly sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. PRINCE:

Q Virginia, would you please set forth your full name and business address?

A My name is Virginia C. Antipolo-Utt. Business address is 2707 Colby Avenue, Suite 1001, Everett, Washington 98201.

Q What have your duties and responsibilities been as it relates to the retirement plan maintained by Internal Medicine Cardiology?

A Since approximately 1988, I have prepared the plan documentation.

Q Prior to that time did the firm perform those duties?

A Yes.

Q When was the plan established?

A Looking at the documents I have in my possession it's August 1, 1976.

Q Do you have the initial documents that formed the plan?

A I do not have those, I have the documents from 1988 on.

EXHIBIT 26

Monday, February 19, 2007

Public Member Sponsor Help

WSBA Lawyer Profile

Member Name	Joseph M. Mano JR	**WSBA Bar #**	5728
Law Firm	Mano McKerricher Paroutaud & Hunt	**Admit Date**	10/25/1974
Address	20 SW 12th St PO Box 1123 Chehalis, WA 98532-0169	**Status**	Active
		Phone	(360) 748-6641
		Fax	(360) 748-6644
		Email	josephm@chehalislaw.com

Only active members of the Washington State Bar Association, and others as authorized by law, may practice law in Washington.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207 and press 7.

Disclaimer

Committee	Position
Hearing Officer Panel	Member

Area(s) of Practice
Criminal
Personal Injury

Is your address current and correct? Send changes to the WSBA Service Center at , or call 800-945-WSBA
Do you have a web page? You can add a web link to your directory listing by clicking ----.

Public Member Sponsor Help

Mano, McKerricher, Paroutaud, Hunt & Sprague, Inc., P.C.

Address: 20 S.W. 12th St.
Chehalis, WA 98532
Map & Directions

Phone: (360) 748-6641

Fax: (360) 748-6644

E-mail:

Attorneys

Attorneys:

[illegible]
[illegible]
McKerricher, John A.
Paroutaud, Richard A., Partner
Sprague, Kendra C.

West Practice Categories:

Family Law

EXHIBIT 27

Mayor Browning called the meeting to order at 7:09 pm.

Pledge of Allegiance

Councilor Moeller led the flag salute.

Council Attendance

Present: Mayor Browning, Mayor Pro-Tem Neely, Councilor Canaday, Councilor Keahey, Councilor Moeller and Councilor Coumbs.

Absent: Councilor Shannon.

1. Approval of Agenda - As Presented

MAYOR PRO-TEM CANADAY MOVED, SECONDED BY COUNCILOR KEAHEY, TO APPROVE THE AGENDA AS PRESENTED...motion PASSED...6-0.

2. Proclamation
   a. School Retirees Appreciation Week

Mayor Browning read the proclamation into the record declaring March 15 - 21, 2004 as School Retirees Appreciation Week. Mary Kidrick and Bobby Rutlidge accepted the proclamation.

3. Presentations
   a. Sandy Seeger - Skate Park Update/Grant Application Status

Sandy Seeger updated the Council of the skate park to date and noted that they have raised approximately $600,000.

4. Comments on Non Agenda Items by the Public

There were none.

5. Reports

Mr. Fouts - had no report.

Councilor Moeller - reported he attended a tour of the WWTP, a Twin Transit meeting and asked to be excused from the March 23, 2004 Council meeting.

Councilor Coumbs - reported he was preparing for the Spring Youth Fair.

Mayor Pro-Tem Canaday - reported she attended the Special meeting on the 3rd, a LC Convention and Visitor's Bureau meeting and the play at the college.

Councilor Keahey - reported he attended a tour of the WWTP, the Special meeting on the 3rd and the play at the college.

Councilor Neely - had no report.

Mayor Browning - reported he would not be in attendance at the March 23, 2004 Council meeting and stated Mayor Pro-Tem Canaday would be in charge.

6. Consent Agenda
   a. Voucher Approval- March 9, 2004 # 73031 - 73216 $660,984.53
   b. Payroll Approval - February 5, 2004 #108303 - 108529 $818,093.97
   c. Approval of revised meeting minutes- February 24, 2004 & March 3, 2004
   d. Approval of contract with GEO Engineers-Part 12 Safety Evaluation
   e. Approval of contract with GEO Engineers-Monthly Instrumentation Analysis to FERC
   f. Approval of contract with CH2M Hill - Cooks Hill Sewer Project
   g. Approval of contract with CH2M Hill-Comp. Surface Water Management Plan
   h. Approval of contract with FCSG-Stormwater Rate and Policy Development

MAYOR PRO-TEM CANADAY MOVED, SECONDED BY COUNCILOR KEAHEY, TO APPROVE THE CONSENT AGENDA AS PRESENTED...motion PASSED... 6-0.

7. Approval on first reading of an Ordinance regarding water rates and charges

COUNCILOR NEELY MOVED, SECONDED BY COUNCILOR COUMBS, THAT THE CENTRALIA CITY COUNCIL APPROVE THE WATER ORDINANCE AND AMEND CERTAIN SECTIONS OF CHAPTER 15.04 OF THE CENTRALIA MUNICIPAL CODE AND REPEALING THOSE SECTIONS IN CONFLICT HEREWITH...

Utilities Director Dick Southworth noted that this was a housekeeping measure that updated definitions, operational standards and water service connection process. He added that there were no rate increases included in this ordinance.

Mayor Browning called for a vote on the motion...motion PASSED...6-0.

8. Approval of City of Centralia and Lewis County PUD Feasibility Study - Phase I

COUNCILOR NEELY MOVED, SECONDED BY COUNCILOR KEAHEY, THAT THE CENTRALIA CITY COUNCIL APPROVE THE PHASE 1 - INITIAL FEASIBILITY STUDY WITH LEWIS COUNTY PUBLIC UTILITY DISTRICT NO. 1 AND AUTHORIZED THE CITY MANAGER TO EXECUTE THE CONTRACT WITH EES CONSULTING IN THE AMOUNT OF $30,000 WITH THE CITY'S SHARE OF $15,000...

Mr. Southworth noted that the feasibility study was only the first phase and if the report shows the potential for significant advantages with any of the alternatives, then the City would approve progressing with the other two phases.

Mayor Browning called for a vote on the motion...motion PASSED...6-0.

9. Approval of Airport Board proposals for loan/financing

COUNCILOR KEAHEY MOVED, SECONDED BY MAYOR PRO-TEM CANADAY, THAT THE CENTRALIA CITY COUNCIL APPROVE THE CHEHALIS-CENTRALIA AIRPORT BOARD'S RECOMMENDATION TO SECURE FUNDS THROUGH WEST COAST BANK, PROVIDED: 1) CENTRALIA REPRESENTATIVES SERVING ON THE AIRPORT BOARD ARE IN AGREEMENT WITH THE RESOLUTIONS. 2) LOAN STATES THAT THE CITY OF CENTRALIA IS NOT LIABLE FOR ANY FINANCIAL COMMITMENT/REQUIREMENT OF THE LOAN. 3) LOAN DOES NOT IMPACT THE CITY'S LIMITATION OF INDEBTEDNESS...

Mr. Fouts reviewed the process to date and noted that it was his recommendation to approve the Board's recommendation with the listed stipulations. Joyce Barnes and Charles Rowe, Centralia's representatives addressed the Council and noted their support to approve this recommendation. Ms Barnes noted that the Airport land was not put up for collateral, only the current and future leases were listed. In response to Councilor Keahey's question as to the bank requesting articles of incorporation, verification of formation of municipal corporation and certificate of election results, Mayor Browning asked that clarification be given to the City Manager as to what the bank was requesting and of whom they were requesting it from.

Mayor Browning called for a vote on the motion...motion PASSED...6-0.

10. a. Introduction of new Community Development Director - Dennis Rhodes

Mr. Fouts introduced Dennis Rhodes, new Community Development Director, to the Council and audience. Mr. Rhodes updated the Council on his background and stated he was happy to serve Centralia.

b. Swearing in of new Police Chief Bob Berg

Mr. Fouts introduced Bob Berg, new Police Chief, to the Council and audience. Chief Berg reviewed his background and introduced his wife Maretta and his daughter Jennifer. Joe Mano, Attorney at Law and Judge Pro-Tem of Centralia Municipal Court, swore Bob Berg in as Centralia's Police Chief.

c. Swearing in of new Reserve Officer - John Clancy

In his first official role as Police Chief, Chief Berg swore in John Clancy as a Reserve Officer.

Adjournment

COUNCILOR KEAHEY MOVED, SECONDED BY MAYOR PRO-TEM CANADAY, TO ADJOURN THE MEETING AT 7:48 PM...motion PASSED...6-0.

Submitted By:

_____
Deena Bilodeau, CMC
City Clerk

Approved By:

_____
Tim A. Browning, Mayor
City of Centralia

EXHIBIT 28

FILED

MAR 22 2007

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re FREDRIC SANAI Lawyer (Bar No. 32347.	Public No. 04#00044 ELC 10.13(b) NOTICE TO ATTEND HEARING

TO: Fredric Sanai

Under Rule 10.13(b) of the Rules for Enforcement of Lawyer Conduct (ELC), you must attend the disciplinary hearing set to begin at 9:00 a.m. on April 16, 2007 at the offices of the Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, Washington 98101.

Dated this 22nd day of March, 2007.

Linda B. Eide, Bar No. 10637
Senior Disciplinary Counsel

Certificate of Service

I certify that I caused a copy of the foregoing Notice to Attend Hearing to be mailed to Respondent at 660 2nd St., No. 7, Lake Oswego, Oregon 97034 by first-class mail, postage prepaid, on the 22nd day of March, 2007 with a copy to Hearing Officer Joseph M. Mano, Jr., 20 SW 12th Street, PO Box 1123, Chehalis, Washington, 98532-0160.

Linda B. Eide

WASHINGTON STATE BAR ASSOCIATION
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8207

EXHIBIT 29

FAX COVER SHEET

April 13, 2007

Page 1 of 1 pages including cover sheet.

JOSEPH MANO Fax (360) 148 - 6644

TO: LINDA EIDE. fax (206) 727 - 3319

West Linn INTERNAL MEDICINE
A Service of Willamette Falls Hospital

18676 Willamette Drive, Suite 100, West Linn, Oregon 97068
(503) 635-6430 Fax: (503) 635-1342

Name: SAWAT FRIEY Date: 4/13/07

Address:

R_x DUE TO MEDICAL REASONS

MR. JAWAT IS UNABLE TO

APPEAR IN TRIAL ON MONDAY

4/16

☐ N.S.
Refill: 1 2 3 4 5 PRN NR

Dea No:

Colin McDonough, M.D.

M.D.

75 0050 0 (3/03)

Comments: DEAR MR. MANO AND MS. EIDE,

I AM AFRAID I AM UNABLE TO APPEAR AT THE PROCEEDINGS ON APRIL 16, 2007 DUE TO SERIOUS MEDICAL REASONS (PHYSICIANS NOTE ABOVE). I REGRET ANY INCONVENIENCE THIS MAY CAUSE, BUT I MUST REQUEST A CONTINUANCE.

LAZERQUICK - Lake Oswego
135 "A" Avenue
Lake Oswego, OR 97034
Phone: 503.636.9669
Fax: 503.636.9660

YOURS TRULY

FREDRIC SAWAT

EXHIBIT 30

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, OR 97034
(503) 636-7779

Joseph M. Mano, Jr., Esq.
Mano, McKerricher & Paroutaud, P.C.
20 SW 12th Street
P.O. Box 1123
Chehalsi WA 98532
Via fax (360) 748-6644

April 16, 2007

Linda Eide, Esq.
WSBA
2101 4th Avenue Suite 400
Seattle WA 98121
Via fax (206) 727-8319

Dear Mr. Mano and Ms. Eide,

On Friday 4/13 I faxed you both a note from my physician stating I was unable to participate in the 4/16 hearing due to medical reasons, and requesting a continuance. I have not heard back from you. Today I obtained a signed declaration from my physician explaining the situation in more detail, as well as my declaration. Please review these and let me know your position on a continuance.

Yours truly,

Fredric Sanai

I, Fredric Sanai, hereby declare the following:

In mid-March I suffered an explosive and debilitating headache which would not go away, causing me to miss work I made an appointment with my physician, Colin McDonough M.D., at the next available date, April 2, as he was out of the office until then. I continued to suffer a massive and debilitating headache, along with inability to sleep, constant shakiness, impaired vision, confusion, nosebleeds, and an inability to focus or even function. I could not wait for Mr. McDonough's return, so I saw Dr. Huey Meeker, who was covering for Dr. McDonough, on March 27, 2007. Dr. Meeker discovered I had severely elevated blood pressure and issued me emergency hypertension drugs to reduce the pressure.

My symptoms continued and I went to see Dr. McDonough on April 2, 2007. He noted no real improvement in my condition and prescribed some different drugs. On April 13, 2007 I returned for another appointment, with continuing symptoms of severe hypertension. Dr. McDonough prescribed additional drugs and asked if there were any particularly stressful events going on in my life. I mentioned my hearing on April 16, 2007 and he told me such an ordeal could have severe repercussions for my health. Dr. McDonough told me I was in no condition for the trial and signed a note on his prescription pad reading "Due to medical reasons Mr. Sanai is unable to participate in trial on Monday 4/16." I then went to a nearby Lazerquick shop and faxed Dr. McDonough's note to Linda Eide and Joseph Mano, requesting a continuance. That was a little after 3 p.m. on Friday, April 13, 2007.

Today I asked Dr. McDonough for a signed declaration explaining my condition in more detail, which he provided. I am unable to return to work and Dr. McDonough stated it may take some weeks for my condition to stabilize. I declare, under penalty of perjury under the law of the United States, that all matters of fact stated in the foregoing are true and correct.

Done this 16th day of April, 2007, at Lake Oswego, Oregon.

Fredric Sanai

Fredric Sanai

EXHIBIT 31

I, Colin McDonough, M.D., hereby declare the following:

1. I am a physician licensed in Oregon specializing in Internal Medicine.

2. Last month my patient Fredric Sanai called for an appointment. As I was going to be unavailable until April 2, he made an appointment for that day. On March 27 he saw Dr. Huey Meeker, who was covering for me. I saw Mr. Sanai on April 2, 2007, and requested he return for a subsequent appointment.

3. On April 13, 2007 Mr. Sanai returned for an appointment with me, with continuing symptoms of severe hypertension. I took his blood pressure which was dangerously high. I enquired of Mr. Sanai if he was under any stress. He stated that he had a trial beginning on Monday, April 16. I instructed him that under no circumstances could he participate in such trial or other highly stressful activity without incurring a severe risk to his health. I wrote a prescription slip note to this effect, dated April 13.

4. I have put Mr. Sanai on anti-hypertension medication. These medications may take approximately 5 weeks to stabilize his hypertension. Until such time has elapsed and I have had the opportunity to examine him, he cannot undertake any highly stressful activities such as a trial without incurring severe risk to his health.

5. I note that on his April 13, 2007 visit, Mr. Sanai did not mention any upcoming stressful activity until I made specific inquiry, and the medical instruction to refrain from participation in any trial was made by me. I declare, under penalty of perjury under the law of the United States, that all matters of fact stated in the foregoing are true and correct.

Done this 16 day of April, 2007, at West Linn, Oregon.

M.D.

Colin McDonough, M.D.

EXHIBIT 32

MANO, McKERRICHER & PAROUTAUD, INC., P.C.
ATTORNEYS AT LAW

20 S.W 12th Street P.O. Box 1123 Chehalis, WA 98532 (360) 748-6641 FAX (360) 748-6644

FACSIMILE COVER SHEET

DATE: April 13, 2007

TO: FREDERIC SANAI

COMPANY: ATTORNEY AT LAW

FAX NO.: 503-434-7553

FROM: JOSEPH M. MANO, JR.

RE: FREDRIC SANAI

HARD COPY TO FOLLOW: ___ YES _X_ NO

THIS IS PAGE 1 OF 2 PAGES

MESSAGE:

MANO, McKERRICHER & PAROUTAUD
ATTORNEYS AT LAW
INCORPORATED P.S.

Joseph M. Mano, Jr.
John A. McKerricher
Richard A. Paroutaud
Trevor A. Zandell
Jerry M. Gray
Susan Biery Sergojan

20 S.W. 12th Street
P.O. Box 1123
Chehalis, WA 98532
Phone: (360) 748-6641
Fax: (360) 748-6644
www.chehalislaw.com

April 13, 2007

Ms. Linda B. Eide
Disciplinary Counsel
WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330
Via Facsimile: (206) 727-8325

Mr. Frederic Sanai
660 2nd Street, Apartment #7
Lake Oswego, OR 97034
Via Facsimile: (503) 434-7553

Re: In Re: Fredric Sanai, WSBA #32347
Public File No. 04#00044

Dear Ms. Eide and Mr. Sanai:

I have received, apparently from Mr. Sanai by fax, a prescription form, which is virtually unreadable because a good part of it is covered by the words "VOID".

Mr. Sanai has requested a continuance for serious medical reasons, which are not specified or documented by the unreadable prescription document.

Accordingly, the request for the continuance is denied.

Very truly yours,

Joseph M. Mano, Jr.
Hearing Officer

JMM/dym

Fredric Sanai
660 2nd Street No. 7
Lake Oswego, OR 97034
(503) 636-7779

Joseph M. Mano, Jr., Esq.
Mano, McKerricher & Paroutaud, P.C.
20 SW 12th Street
P.O. Box 1123
Chehalis WA 98532
Via fax (360) 748-6644

April 20, 2007

Linda Eide, Esq.
WSBA
2101 4th Avenue Suite 400
Seattle WA 98121
Via fax (206) 727-8319

Dear Mr. Mano,

During our telephone hearing on the morning of April 17, 2007, you raised some concerns which I will address here. First, you questioned Dr. McDonough's signed statements. I append a supplemental declaration which should address the issues of the medications I have been given or prescribed, my blood pressure readings, and the attestation of Dr. McDonough.

Second, you inquired why I faxed Ms. Edie's copies to the (206) 727-8319 number. I replied that (206) 727-8319 is the fax number given on the WSBA's website in the "Contact Us" section. I append a print-out of that webpage which confirms my statement was correct.

In light of this additional evidence, I respectfully ask you reconsider your denial of my motion for a continuance.

Yours truly,

Fredric Sanai

Fredric Sanai

Cc: Linda Eide, Esq., WSBA

SUPPLEMENTAL DECLARATION of COLIN McDONOUGH, M.D.

I, Colin McDonough, M.D., hereby declare the following:

1. I am a physician licensed in Oregon specializing in Internal Medicine.

2. My patient Fredric Sanai has recently been prescribed and/or given the following prescription medications to deal with serious hypertension: Benicar (olmesartan medoxomil), Clonidine (hydrochloride USP), Toprol XL (metoprolol succinate), and TRIAMT 37.5/HCTZ 25(M) TB/PLIV. This was in response to his dangerously elevated blood pressure, including readings of 180/130 and 200/140. Proceeding to a highly stressful multi-day trial could have had serious adverse health effects, including stroke or aneurysm.

3. I hereby incorporate by this reference all statements in my prescription pad note of April 13, 2007 and my declaration of April 16, 2007 as if repeated here in full. I declare, under penalty of perjury under the law of Oregon, Washington and the United States, that all matters stated in this declaration, the April 16, 2007 declaration and April 13, 2007 prescription pad note are true and correct.

Executed this 20th day of April, 2007, at West Linn, Oregon.

Colin McDonough, M.D.

Fax

[redacted]

E-mail

- [redacted]

WSBA FAX NUMBER ON WSBA WEBSITE

(206) 727-8319